

1  
2  
3  
4 **State of Washington**  
5 **GROWTH MANAGEMENT HEARINGS BOARD**  
6 **FOR EASTERN WASHINGTON**  
7

8  
9 JOHN and KATHY HUMPHREY,

10 Petitioners,

11 v.

12 DOUGLAS COUNTY,

13 Respondent.  
14

Case No. 07-1-0010

ORDER ON MOTION TO DISMISS

15  
16 **I. PROCEDURAL HISTORY**

17 On August 23, 2007, JOHN and KATHY HUMPHREY, by and through their  
18 representative, J. Kevin Bromiley, filed a Petition for Review.

19 On September 13, 2007, the Board received Respondent's Motion to Dismiss Petition  
20 for Lack of Service.

21 On September 14, 2007, the Board received Petitioners' Response to Respondent's  
22 Motion to Dismiss, Declaration of J. Kevin Bromiley, Declaration of Becky Woods, and  
23 Declaration of Danelle Trovato.

24 On September 18, 2007, the Board held a telephonic Prehearing conference. Present  
25 were Joyce Mulliken, Presiding Officer, and Board Member, Dennis Dellwo. Board Member  
26

1 John Roskelley was unavailable. Present for the Petitioners was Kevin Bromiley. Present for  
2 the Respondents was Steve Clem.

3 Prior to the telephonic Prehearing conference the Board heard Respondent's Motion  
4 to Dismiss. With the consent of the parties, the Motion to Dismiss was considered at the  
5 prehearing conference and after considering the briefing and arguments, the Motion to  
6 Dismiss was denied.

7 On September 21, 2007, the Board issued its Prehearing Order.

## 8 II. Motion

9 The Respondent, the County, moved this Board to dismiss the Petition in this matter,  
10 contending that the Petition for Review was not properly served upon the County. The  
11 County alleges that the Petition in this matter was not served upon the Douglas County  
12 Auditor within the time allowed under WAC 242-02-230.

## 13 II. DISCUSSION

14 The County alleges that the Petitioners failed to serve the County in accordance with  
15 the Board's Rules of Practice and Procedure; therefore, contending the PFR should be  
16 dismissed. In response the Petitioner contends that, immediately upon discovering that  
17 such service was not provided, they served the Auditor and the County's attorney with a  
18 copy of the PFR. They further contend that the county has not been prejudiced.

19 WAC 242-02-230 provides:

20 (1) The original and three copies of the petition for review shall be filed with a board  
21 personally, or by first class, certified or registered mail. Filings may also be made  
22 with a board by electronic facsimile transmission as provided in WAC 242-02-240. A  
23 copy of the petition for review shall be personally served upon all other named  
24 parties or deposited in the mail and postmarked on or before the date filed with the  
25 board. When a county is a party, the county auditor shall be served in noncharter  
26 counties and the agent designated by the legislative authority in charter counties.  
The mayor, city manager, or city clerk shall be served when a city is a party. When  
the state of Washington is a party, the office of the attorney general shall be served  
at its mail otherwise provided by law. Proof of service may be filed with the board  
pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1)  
of this subsection.

1  
2 RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure"  
3 does not authorize a GMHB to impose a jurisdictional service of PFR requirement when no  
4 such specific authority is provided in the GMA. Under RCW 36.70A.280 and .290 there is no  
5 requirement that a PFR be served anywhere except at the appropriate GMHB office. Where  
6 the jurisdiction does not demonstrate any prejudice from the failure to serve the PFR on it,  
7 a motion to dismiss will be denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97).

8 WAC 242-02-230 provides that substantial compliance is sufficient. Further, in order  
9 to justify a dismissal for failure to serve, a local government must demonstrate that it has  
10 suffered prejudice. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95) Under WAC  
11 242-02-230 a GMHB has broad discretion on the issue of dismissal for failure to properly  
12 serve a local government. The substantial compliance test, as well as the absent of any  
13 legislative requirement in the GMA that mandates service on a local government, means  
14 that absent a showing of prejudice by the local government a GMHB has no basis upon  
15 which to grant dismissal for failure to serve the Respondent. *Kennon v. Clark County* 95-2-  
0002 (MO 5-9-95).

16 In this case, the County was properly served by the Petitioners upon their discovery  
17 that such service was not properly obtained. The County has not shown that it was  
18 prejudiced by such delay in service. Further, the Board believes that substantial compliance  
19 with the rule occurred. The County Commissioners and the County attorney were aware of  
20 the intention of the Petitioners to file a petition and, in fact, received a copy of the draft of  
21 that petition. The Douglas County Prosecuting Attorney's office had been contacted by the  
22 Petitioner's attorney and informed of the expected petition, seeking clarification of a  
23 potential conflict. This case does not warrant an order of dismissal for failure to properly  
24 serve the County.  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**III. ORDER**

The Eastern Washington Growth Management Hearings Board denies the Respondent's motion to dismiss the Petition in this matter.

**SO ORDERED** this 21<sup>st</sup> day of September 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

\_\_\_\_\_  
Joyce Mulliken, Board Member

\_\_\_\_\_  
Dennis Dellwo, Board Member

\_\_\_\_\_  
John Roskelley, Board Member