

1
2
3
4
5
6
7
8
9
10
11
12

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

CHRISTINE WYNECOOP and
NEIGHBORHOOD ALLIANCE OF SPOKANE,

Petitioners,

Case No. 07-1-0007

v.

ORDER ON REMAND

(Thurston County Superior Court

SPOKANE COUNTY,

Case No. 08-2-00036-0)

Respondent.

13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. RELEVANT PROCEDURAL HISTORY

On November 14, 2007, the Eastern Washington Growth Management Hearings Board (Board) issued its Final Decision and Order of Dismissal (FDO) in the above-captioned matter. In the FDO, the Board dismissed the case in its entirety finding the Board lacked jurisdiction over the matter because the Petition for Review (PFR) which challenged an administrative interpretation (AI) issued by Spokane County's Planning Director had not been filed within the statutory appeal period provided for in RCW 36.70A.290(2). In addition, the Board noted the Petitioners had failed to assert the type and basis of standing within their PFR and, therefore, the Board was unable to conclude that the Petitioners in fact had standing to pursue the matter.

On January 7, 2008, the Petitioners sought review of the Board's decision in Thurston County Superior Court Cause No. 08-2-00036-0. On September 26, 2008, the Honorable Richard D. Hicks issued his decision in the matter. The Court determined the Board erred in dismissing the PFR for lack of jurisdiction because Spokane County had failed to "properly apply the publication requirement" which resulted "in the non-initiation of the

1 [60-day] appeals time limitations.”¹ In addition, the Court concluded the record indicated
2 the “nature of Petitioners’ injuries, interests, and remedy sought” are sufficient to support
3 standing in this matter.² Thus, the Court stated:³

4 Therefore, it is hereby:

5 **ORDERED** that the Final Decision and Order of Dismissal of the
6 Eastern Washington Growth Management Hearings Board, Case No. 07-1-
7 0007, dated November 14, 2007, as supplemented by the Order on
8 Petitioners’ Motion for Reconsideration dated December 14, 2007, is reversed
9 and remanded to the Eastern Washington Growth Management Hearings
Board.

10 **IT IS FURTHER ORDERED** that the Eastern Washington Growth
11 Management Hearings Board take other appropriate action consistent with this
12 Order.

13 On November 19, 2008, the Board held a Telephonic Remand Hearing. Board
14 members Joyce Mulliken and Ray Paoella attended; Board Member Mulliken Presiding. The
15 Petitioners were represented by Rick Eichstaedt, and Spokane County was represented by
16 Dave Hubert. Board Staff Attorney Julie Ainsworth-Taylor also attended the hearing. No
written briefing was submitted by the parties.

17 **II. BOARD DISCUSSION**

18 At the Remand Hearing, the parties were given the opportunity to discuss the
19 proceedings which occurred before the Thurston County Superior Court and subsequent
20 discussions that had occurred between the parties after the Court rendered its September
21 2008 Order. Both parties noted that discussions were approaching resolution of the matter
22 and the County was willing to undertake the needed comprehensive plan amendment

23 _____
24 ¹ Order on Judicial Review, at 3-4.

25 ² Order on Judicial Review, at 4.

26 ³ Order on Judicial Review, at 4-5.

1 process which would include the required public participation. Given the need for the
2 public participation and Planning Commission recommendation prior to the legislative action
3 going before the County Commissioners, the County requested 180 days to complete the
4 process.

5 The Board notes that pursuant to RCW 36.70A.300(2)(b) an extension of 90 days
6 may be granted to enable the parties to settle a dispute if additional time is necessary to
7 achieve a settlement. The Board further notes the ability of the Board to grant such an
8 extension pertains to the time period between receipt of a PFR and the Board's issuance of
9 a FDO. Pursuant to RCW 36.70A.300(3)(b), a County which is found to not be in compliance
10 with the requirements of the GMA may be granted up to 180 days, except in cases of
11 unusual scope or complexity, within which the County shall take action to comply with the
12 GMA.⁴ Thus, the GMA provides for two timeframes – a 90 day settlement extension *prior* to
13 the Board's issuance of a FDO or a 180 day compliance period *after* the issuance of the
14 Board's FDO.

15 In this matter, the Board issued its FDO which found the Board lacked jurisdiction
16 and, therefore, the Board did not rule on the merits of the issues presented by the
17 Petitioners. Thus, it would appear the provisions of RCW 36.70A.300(2)(b) are no longer
18 applicable since the Board has issued its FDO. However, with the FDO, the Board did not
19 find compliance or non-compliance with the GMA. Rather, the Board concluded it did not
20

21 ⁴ The Board notes that within the Thurston County Superior Court's Findings, the Court noted the record indicated that
22 "Spokane County failed to comply" with the GMA. *Order*, at 4. RCW 36.70A.300 charges the Board with finding
23 compliance or non-compliance with the GMA. *See, Manke Lumber v. Diehl*, 91 Wn. App. 793 (1998) (holding that the
24 Superior Court lacked authority to find the County in compliance with the GMA because under the APA the Court is to
25 limit its function to assuring that the Board has exercised its discretion in accordance with the law and shall not undertake
26 to exercise discretion the Legislature has placed in the Board); *See also, Lewis County v. WWGMHB*, 157 Wn.2d 488
(2006)(noting that it is the Board who is charged with adjudicating GMA Compliance).

1 have jurisdiction to address the case in its entirety and, as such, the provisions of RCW
2 36.70A.300(3)(b) which relate to compliance proceedings also appear to be inapplicable.⁵

3 This leaves the Board in a quandary as the parties to this matter are now actively
4 seeking settlement of the dispute and the Board promotes and encourages settlement.
5 Therefore, to resolve this quandary, the Board looks to the September 2008 ruling of the
6 Thurston County Superior Court which reversed the Board's determination as to jurisdiction.
7 With its ruling, the Court concluded the Board erred and that the Board, in fact, had
8 jurisdiction to issue a decision on the merits of the issues presented by the Petitioners – a
9 task the Board has not yet done. Therefore, the Board finds and concludes that although its
10 November 14, 2007, decision was entitled a "Final Decision and Order of Dismissal" the
11 ruling of the Superior Court has expunged the FDO. Given the fact the Board has never
12 ruled on the merits of the case so as to determine whether or not Spokane County's action
13 in regards to the administrative interpretation was in compliance with the GMA, the
14 resulting effect of the Court's Order is as if the FDO had never been issued. In this regard,
15 the provisions of RCW 36.70A.300(2)(b) which permit a 90 day extension are available and
16 the Board shall grant an extension of the matter for the purpose of settlement negotiations.

17 However, the parties should note the Board is establishing a new case schedule in
18 this matter and, if negotiations do not prove fruitful, the Board will review the previously
19 submitted briefing and the transcript of the October 9, 2007, Hearing on the Merits and
20 issue a decision within 30 days of the expiration of the 90 day extension period. If the
21 dispute is resolved or more time is deemed necessary, the parties will need to file with the
22 Board a Stipulated Motion noting dismissal or an additional extension *prior* to the expiration
23 of the 90 day period.

24 ⁵ The Board notes that at the November 19 Remand Hearing, the Board inquired whether Spokane County was willing to
25 stipulate to non-compliance given its statements that it was taking action to comply with the GMA in response to
26 Petitioners' issues and the Superior Court's Order. The County chose not to stipulate to non-compliance.

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

1. The Board grants a 90 day extension of Case No. 07-1-0007 for the purpose of settlement negotiations. This extension period shall commence from the date of this Order on Remand and expire on February 23, 2009 at 4:30 PM.

2. If the Board has not received communication as to the settlement negotiations *prior* to the expiration of the 90 day period, the Board will issue a decision on the merits of the case as presented by the parties in their previously submitted briefing and October 9, 2007, Hearing on the Merits. The Board will issue this decision no later than March 24, 2009.

SO ORDERED this 24th day of November 2008.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Joyce Mulliken, Board Member

Raymond L. Paoella, Board Member