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

DAN HENDERSON, LARRY KUNZ, NEIL  
MEMBREY, KASI HARVEY-JARVIS, &  
NEIGHBORHOOD ALLIANCE OF SPOKANE,

Petitioners,

v.

SPOKANE COUNTY,

Respondent,

McGLADES, LLC,

Intervenors.

Case No. 08-1-0002

ORDER DENYING INTERVENORS'  
MOTION FOR RECONSIDERATION  
OF BOARD'S ORDER DENYING  
MOTIONS TO DISMISS

**I. PROCEDURAL HISTORY**

On February 8, 2008, DAN HENDERSON, LARRY KUNZ, NEIL MEMBREY, KASI HARVEY-JARVIS, & NEIGHBORHOOD ALLIANCE OF SPOKANE, by and through their representative, Rick Eichstaedt, filed a Petition for Review.

On March 10, 2008, the Board<sup>1</sup> held the telephonic Prehearing conference. Present were John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo.

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<sup>1</sup> Eastern Washington Growth Management Hearings Board.

1 Board Member Joyce Mulliken was unavailable. Present for the Petitioners was Rick  
2 Eichstaedt. Present for the Respondent was Dave Hubert.

3 On March 13, 2008, the Board received a McGlades LLC's Motion and  
4 Memorandum in Support of Motion to Intervene.

5 On March 17, 2008, the Board issued its Prehearing Order.

6 On March 19, 2008, the Board received Petitioner's Response to Motion to  
7 Intervene.

8 On March 20, 2008, the Board issued its Order Granting Intervenor's Motion to  
9 Intervene.

10 On March 31, 2008, the Board received Intervenors Motion to Dismiss for Lack of  
11 Subject Matter Jurisdiction.

12 On April 14, 2008, the Board received Petitioners' Response to Motion to Dismiss  
13 and Declaration of Rick Eichstaedt in Support of Petitioners' Response to Motions to  
14 Dismiss.

15 Also on April 14, 2008, the Board received Respondent's Response to  
16 Intervenor's Motion to Dismiss.

17 On April 18, 2008, the Board received Petitioners' Errata to Response to Motion  
18 to Dismiss.

19 On April 21, 2008, the Board received Intervenor's Reply to Petitioners' Response  
20 to Motion to Dismiss. The Board also received Respondent's Reply to Petitioners'  
21 Objection to Intervenor's Motion to Dismiss and Declaration of John Pederson.

22 On April 24, 2008, the Board received Petitioners' Motion to Strike or, in the  
23 Alternative, Limited Motion to Supplement the Record.

24 On April 25, 2008, the Board received County's Response to Petitioners' Motion  
25 to Strike.

26 On April 29, 2008, the Board held a telephonic motion hearing. Present were  
John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo and Joyce

1 Mulliken. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent  
2 was Dave Hubert. Present for Intervenors was F.J. Dullanty, Jr. and Nathan Smith.

3 On May 14, 2008, the Board issued its Order Denying Motions to Dismiss.

4 On May 21, 2008, the Board received a Stipulated Request for Continuance  
5 requesting a 30-day extension signed by the parties in this matter.

6 On May 23, 2008, the Board issued its Order Granting Stipulated Request for  
7 Continuance.

8 On July 11, 2008, the Board received Intervenors' Motion for Reconsideration of  
9 the Board's Order Denying Motions to Dismiss.

10 On July 15, 2008, the Board received Petitioners' Response to Intervenor's  
11 Motion for Reconsideration.

12 On July 16, 2008, the Board received Respondent Spokane County's Response in  
13 Support of Intervenor's Motion for Reconsideration.

## 14 II. DISCUSSION

15 Intervenor McGlades, LLC filed a Motion for Reconsideration of the Board's May  
16 14, 2008 Order Denying Motions to Dismiss. In support of this motion, Intervenor cites  
17 to the Court of Appeals, Divison III's June 26, 2008, holding in *Coffey v. City of Walla*  
18 *Walla* (Docket 26277-4-III). Spokane County concurs with Intervenor's assertion that  
19 this case demonstrates material "errors of procedure or misrepresentation of fact or  
20 law" and the Board erred in determining it had jurisdiction over the issues presented by  
21 Petitioners.

22 The Petitioners' disagree and argue the Intervenor's motion is untimely, does not  
23 relate to a final order, and provides additional authority that is not relevant to the  
24 Board's Order Denying Motions to Dismiss.

### 25 ***Board's Analysis:***

26 A motion for reconsideration must be based on alleged material errors of  
procedures, misinterpretation of fact, misinterpretation of law; an irregularity that  
occurred at the hearing preventing a fair hearing; or clerical mistakes in the final

1 decision. WAC 242-02-832(2)(a)-(c). With its motion, the Intervenor essentially alleges  
2 a misinterpretation of law.

3 In addition, WAC 242-02-832 requires that a motion for reconsideration must be  
4 filed within 10 days of service of the Board's Order. As noted *supra*, the Board issued its  
5 decision in this matter on May 14, 2008, and the Intervenor's Motion for  
6 Reconsideration was received on July 11, 2008, *almost 60 days after the Board issued*  
7 *its Order*.

8 The Board notes that the Intervenor, in a footnote, concedes that its Motion is  
9 untimely. But, the Intervenor then asserts a motion contesting jurisdiction may be  
10 raised at any time. While this is a true statement, the Intervenor is not seeking a Motion  
11 for Dimissal based on Subject Matter Jurisdiction; they are seeking *reconsideration*<sup>2</sup> by  
12 the Board of an Order issued approximately two months ago. As noted *supra*, the time  
13 for filing such a request has long ago expired.

14 Even if the Board were to reconsider its decision, such a reconsideration is to be  
15 based upon the law in place at the time the Board issued its decision, not on a case  
16 issued months after the Board's decision. Intervenor's seek, with its citation to *Coffey*  
17 *v. City of Walla Walla*, application of an interpretation of the law that was not available  
18 for consideration at the time the Board made its decision and, thus, is irrelevant to the  
19 Board's determination on May 14, 2008.

20 Having reviewed the Intervenor's Motions for Reconsideration, the County's and  
21 Petitioner's Response, and the relevant provisions of the GMA and the Board's Rules of  
22 Practice and Procedure, **the Board finds, pursuant to WAC 242-02-832(1), the**  
23 **Intervenor's Motion for Reconsideration is untimely and will not be**  
24 **considered by the Board.**

25 <sup>2</sup> Intevenor's Motion is captioned *Motion for Reconsideration of the Board's Order Denying Motions to Dismiss*  
26 (Emphasis added)

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**III. ORDER**

Therefore, because this motion for reconsideration is untimely, the Board **DENIES** the Intervenor's request for reconsideration.

**SO ORDERED** this 21<sup>st</sup> day of July 2008.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

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

\_\_\_\_\_  
Raymond L. Paoella, Board Member

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

NOTE: This order constitutes a final order as specified at WAC 242-02-832(4). Orders on Reconsideration are not subject to additional motions for reconsideration. WAC 242-02-832(3).