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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 ON MOTION TO STRIKE

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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 Board¹ held the telephonic Prehearing conference. Present were John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo. Board Member Joyce Mulliken was unavailable. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent was Dave Hubert.

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

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

¹ Eastern Washington Growth Management Hearings Board.

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

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

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

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

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

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

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

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

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

21 On April 29, 2008, the Board held a telephonic motion hearing. Present were
22 John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo and Joyce
23 Mulliken. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent
24 was Dave Hubert. Present for Intervenors was F.J. Dullanty, Jr. and Nathan Smith.

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

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

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

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

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

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

9 On July 21, 2008, the Board issued its Order Denying Intervenors' Motion for
10 Reconsideration.

11 On August 8, 2008, the Board held the hearing on the merits. Present were John
12 Roskelley, Presiding Officer, and Board Member, Raymond Paolella. Board Member
13 Joyce Mulliken was unavailable. Present for the Petitioners was Rick Eichstaedt. Present
14 for the Respondent was Dave Hubert. Present for Intervenors was F.J. Dullanty, Jr. and
15 Nathan Smith.

16 II. DISCUSSION

17 Henderson, et al.,² (Petitioners) filed a Motion to Strike portions of Spokane
18 County's (County) exhibits filed as part of the County's Hearing on the Merits Response
19 Brief. Petitioners claimed the County included documents outside of the scope of the
20 identified Index of Record. Petitioners also contend the County failed to properly tab the
21 documents as directed by the Eastern Washington Growth Management Hearings
22 Board's (Board) Pre-hearing Order. In addition, Petitioners argued they require an
23 adjusted briefing schedule and hearing date in the matter to afford consideration of
24 properly tendered exhibits. Petitioners claim the following documents were outside the
25 Index of Record: (1) files identified as "CUN-08-05"; (2) "CUN-08-05 Exhibits A-N"; (3)
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² Dan Henderson, Larry Kunz, Neil Membrey, Kasi Harvey-Jarvis, and Neighborhood Alliance of Spokane.

1 e-mails at County's Exhibits at P-2262 – P-2311; and (4) pleadings under *Gabel v.*
2 *Spokane County*, Exhibits P-2340 – P2420.³

3 Respondent, Spokane County, argues it did not include any additional evidence
4 that was not considered by the County in arriving at its decision to create a LAMIRD
5 containing the property subject to this action. The County does agree Exhibit A, P-2340
6 – P-2420, is irrelevant to the matter and need not be part of the record before the
7 Board. The County claims "CUN-08-05" and "CUN-08-05 Exhibits A-N" were part of the
8 record relied upon by the Hearing Examiner, thus part of the overall record, and the e-
9 mails, Exhibits P-2262 – P-2311, were received by the County prior to the record being
10 closed by the Spokane County Board of County Commissioners (BOCC). As to the issue
11 of tabbing the documents, the County claims there is only one exhibit, Exhibit A, and a
12 CD copy of the entire record was provided to the Board and the parties.

13 Intervenor, McGlades, LLC (McGlades), claims Petitioners fail to give a single
14 reason why the aforementioned documents should be stricken from the record, nor is
15 there any affirmative identification these documents are located outside of the record.
16 As did the County, McGlades argues the documents found under "CUN-08-05" and
17 "CUN-08-05 Exhibits A-N" were used by the Hearing Examiner in his decision to deny
18 the Conditional Use Permit, CUN-08-05, and these documents were cited frequently by
19 the Hearing Examiner in response to Petitioners SEPA appeal. Furthermore, McGlades
20 contends Petitioners cannot identify any element of prejudice they have incurred as a
21 result of the documents being placed in the record.

22 **Board Discussion:**

23 Petitioners Motion to Strike involves three issues: (1) adjust the briefing schedule
24 and hearing date; (2) strike documents outside of the scope of the County's Index of
25 Record; and (3) asks the Board to direct the County to expeditiously prepare a proper
26 index of exhibits that includes documents actually identified in the Index of Record.

³ Petitioners Motion to Strike at 3-4.

1 In regards to Issue (1), Petitioners' request to adjust the briefing schedule and
2 hearing date, the Board issued its Order Granting Extension to File Petitioners' Hearing
3 on the Merits Reply Brief on June 30, 2008, permitting an additional day as requested
4 by the Petitioners, but did not adjust the hearing date.

5 As to Issue (2), Petitioners' request to strike files identified as "CUN-08-05",
6 "CUN-08-05 Exhibits A-N", e-mails at County's Exhibits at P-2262 – P-2311, and
7 pleadings under *Gabel v. Spokane County*, Exhibits P-2340 – P-2420, the Board,
8 DENIES in part and GRANTS in part. After reading the briefs and hearing the parties
9 arguments at the Hearing on the Merits, the Board DENIES the Motion to Strike files
10 identified as "CUN-08-05", "CUN-08-05 Exhibits A-N", and e-mails at County's Exhibits
11 P-2262 – P-2311, as these files are determined by the Board to be in the record used by
12 the County to make their determination. The Board GRANTS Petitioners request to
13 strike pleadings under *Gabel v. Spokane County*, Exhibits P-2340 – P-2440, as these
14 files were not part of the record in this case as attested to by the County.

15 As to Issue (3), the Board finds the County failed to properly submit exhibits as
16 set forth in the Pre-hearing Order, but will not require the County at this time to re-
17 submit the documents properly tabbed and as single-sided copies. As set forth in the
18 Pre-hearing Order, exhibits must be single-sided, clearly tabbed and accompanied by a
19 table of attached exhibits naming and describing each exhibit. Naming the entire record
20 as Exhibit A does not excuse the County from tabbing individual documents. The Board
21 feels, at this point in the proceedings, the expense to the County to mail numerous
22 boxes of files back and forth is prohibitive and unnecessary. The County supplemented
23 the paper documents with a complete CD of all files, which will enable the Board and
24 parties to search the record as needed. Exhibit submittals in future cases that are not in
25 compliance with the Board's Pre-Hearing Order will not be accepted.
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1 **III. ORDER**

2 Based upon the briefs and exhibits submitted by the parties, having considered
3 the arguments of the parties at the August 8, 2008 Hearing on the Merits, and having
4 deliberated on the matter, the Board ORDERS:

- 5 1. Motion to Strike files identified as "CUN-08-05"; "CUN-08-05
6 Exhibits A-N"; and e-mails at County's Exhibits P-2262 – P-2311 is
7 DENIED.
- 8 2. Motion to Strike pleadings under *Gabel v. Spokane County*, Exhibits
9 P-2340 – P2420 is GRANTED.
- 10 3. Request to direct the County to prepare a proper index of exhibits
11 is DENIED, but Spokane County is put on notice that submittals of
12 exhibits in future cases are to be filed as required by the Board's
13 pre-hearing order or they will be rejected.
- 14 4. The briefing schedule was adjusted per the Board's Order Granting
15 Extension to File Petitioners' Hearing on the Merits Reply Brief
16 issued June 30, 2008, granting an additional day as requested by
the Petitioners. The hearing date was not adjusted at that time.

17 **SO ORDERED** this 12th day of August 2008.

18 EASTERN WASHINGTON GROWTH MANAGEMENT
19 HEARINGS BOARD

20 _____
21 John Roskelley, Board Member

22 _____
23 Raymond L. Paolella, Board Member

24 _____
25 Joyce Mulliken, Board Member