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

JASON & LAURIE MOE, and BRUCE MOE,

Petitioners,

v.

KITTITAS COUNTY,

Respondent,

ELLENSBURG CEMENT PRODUCTS, INC.,

Intervenors.

Case No. 08-1-0010

ORDER ON MOTIONS

I. PROCEDURAL HISTORY

On February 28, 2008, JASON & LAURIE MOE, and BRUCE MOE, by and through their representative, Allan Bakalian, filed a Petition for Review.

On March 21, 2008, Respondent Kittitas County filed the Index of Record with the Board and served a copy on Petitioners' counsel.

On March 21, 2008, the Board received ELLENSBURG CEMENT PRODUCTS, INC., Motion to Intervene.

On March 28, 2008, the Board heard Ellensburg Cement Products, Inc.'s Motion to Intervene. There were no objections, and the Board granted intervention status to Ellensburg Cement Products, Inc.

On March 28, 2008, the Board held the telephonic Prehearing conference. Present were Dennis Dellwo, Presiding Officer, and Board Members, John Roskelley and Joyce Mulliken. Present for the Petitioners were Allan Bakalian. Present for the Respondent was Neil Caulkins. Present for Intervenors was Gregory McElroy.

1 On April 2, 2008, Respondent transmitted a copy of the Index of Record to
2 Intervenor.

3 On April 4, 2008, the Board issued its Prehearing Order.

4 On April 17, 2008, the Board received Kittitas County's Motion to Dismiss and for
5 Summary Judgment, Ellensburg Cement Products' Joinder in Kittitas County's Motion to
6 Dismiss and for Summary Judgment.

7 On April 18, 2008, the Board received Petitioners' Motion to Supplement Record and
8 Petitioners' Dispositive Motion to Invalidate Docket No. 07-01 of Ordinance No. 2007-38
9 Amending the Kittitas County Comprehensive Plan.

10 On April 30, 2008, the Board received Kittitas County's Response to Petitioners'
11 Dispositive Motion.

12 On May 1, 2008, the Board received Petitioners' Response to Kittitas County's Motion
13 to Dismiss and for Summary Judgment. The Board also received Ellensburg Cement
14 Products' Motion to Extend Time and to Correct the Record, Memorandum in Support of
15 Motion to Extend Time and Correct the Record, Memorandum in Opposition to Petitioners'
16 Motion to Supplement Record, and Memorandum in Opposition to Petitioners' Dispositive
17 Motion to Invalidate Docket No. 07-01 of Ordinance No. 2007-38 Amending Kittitas County
18 Comprehensive Plan.

19 On May 8, 2008, the Board received Ellensburg Cement Products' Rebuttal in Support
20 of Summary Judgment.

21 On May 8, 2008, the Board received Petitioners' Response to Ellensburg Cement
22 Products' Motion to Extend Time and to Correct the Record, Reply in Support of Petitioners'
23 Motion to Supplement, and Reply to Kittitas County's and Ellensburg Cement Products'
24 Response to Petitioner's Dispositive Motion to Invalidate the Ordinance.

25 On May 9, 2008, the Board received Kittitas County's Rebuttal in Motion to Dismiss
26 and for Summary Judgment and County's Motion to Strike.

On May 12, 2008, the Board held the telephonic motion hearing. Present were
Dennis Dellwo, Presiding Officer, and Board Members, John Roskelley and Joyce Mulliken.

1 Present for the Petitioners were Allan Bakalian. Present for the Respondent was Zera Lowe.
2 Present for Intervenors was Gregory McElroy.

3 II. DISCUSSION

4 After consideration of the parties' pleadings filed with the Board and arguments
5 during the Hearing on the Motions, the Board took the following actions.

6 **Evidentiary Motions:**

7 Evidentiary motions were decided by the Presiding Officer on the briefs and without
8 oral argument as follows:

9 **Petitioners' Motion to Supplement Record:**

10 Petitioners' moved to supplement the record, in accordance with WAC 242-02-540,
11 with copies of several mining leases recorded in Kittitas County and photographs of the Elk
12 Heights exit along Interstate 90. Respondent and Intervenor opposed the motion. The
13 Presiding Officer ruled at the outset of the hearing that the documents and photographs
14 were outside the record before Kittitas County and that they would not be admitted. It was
15 ruled that the additional evidence is not necessary or of substantial assistance to the Board
16 in reaching its decision.

17 **Intervenor's Motion to Extend Time and to Correct the Record:**

18 Intervenor Ellensburg Cement Products moved to correct the administrative record
19 with two documents omitted from the Index of Record prepared by Respondent. Petitioner
20 opposed the motion. The Presiding Officer ruled at the outset of the hearing that the
21 documents were part of the record before Kittitas County and that the Record would be
22 corrected to include such documents.

23 **Motions on the Merits**

24 The motions on the merits were decided by the Board on the briefs and with oral
25 argument as follows:

26 **Respondent and Intervenor's Motion to Dismiss:**

Respondent, joined by Intervenor, moved to dismiss the Petition for Review based
upon Petitioners' alleged failure to properly serve the Kittitas County auditor as required by

1 WAC 242-02-230(1). Petitioners argued that WAC 242-02-230(1) is not a jurisdictional
2 requirement and that Respondent did not demonstrate any prejudice from the alleged
3 defective service. The Board ruled that the case would not be dismissed.

4 **Respondent and Intervenor's Motion for Summary Judgment and Petitioners'**

5 **Motion to Invalidate:**

6 Respondent moved to have the Petition for Review dismissed on summary judgment, based
7 upon its argument that there were no genuine issues of material fact regarding the County's
8 adoption of Ordinance No. 2007-38 on December 31, 2007, reclassifying 80 acres to Mineral
9 Lands of Long Term Commercial Significance under the Kittitas County Comprehensive Plan
10 and Map (the "Ordinance"). Petitioners opposed Respondent's motion and filed their own
11 dispositive motion to invalidate the Ordinance. Respondents opposed Petitioners'
12 dispositive motion. The Board finds that the issues pertaining to the validity of the
13 Ordinance are complicated and cannot be resolved without a hearing on the merits and
14 review of the entire record in the matter. **Procedural Matters**

15 **Transcript of Public Comments:**

16 The Board recommended that the parties confer on the need for transcripts of
17 relevant public testimony in these proceedings and for the production of transcripts,
18 including voluntary cost sharing where appropriate.

19 **III. ORDER**

20 Based upon review of the Petition for review, prehearing order, the briefing of the
21 parties, the Board's prior rulings and applicable judicial cases, the GMA and its regulations,
22 and having considered the arguments of the parties and deliberated on the matter, the
23 Board ORDERS:

- 24 1. Petitioners' Motion to Supplement the Record is denied;
- 25 2. Intervenor's Motion to Extend Time and to Correct the Record is granted;
- 26 3. Respondent's and Intervenor's Motion to Dismiss is Denied;
4. Respondent's and Intervenor's Motion for Summary Judgment is denied; and
5. Petitioner's Motion to Invalidate the Ordinance is denied.

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SO ORDERED this 16th day of May 2008.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Presiding Board Member

John Roskelley, Board Member

Joyce Mulliken, Board Member