State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

LARSON BEACH NEIGHBORS and JEANIE WAGENMAN, Petitioner(s), v. STEVENS COUNTY, Respondent(s).	Case No. 07-1-0013 **ORDER ON MOTION FOR RECONSIDERATION**

This matter comes before the Eastern Washington Growth Management Hearings Board (Board) upon Steven County's Motion for Reconsideration, filed pursuant to WAC 242-02-832.[1] With this Motion, Stevens County requests the Board reconsider its decision set forth in the April 16, 2009 First Order on Compliance.

Petitioners Larson Beach Neighbors and Jeanie Wagenman request denial of the County's Motion.[2]

[1] Stevens County's Motion for Reconsideration, filed April 27, 2009.
[2] Petitioners' Response to Respondent's Motion for Reconsideration, filed May 6, 2009.

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I. PROCEDURAL HISTORY

On October 6, 2008, the Board issued its Final Decision and Order (FDO) in this matter. Of relevance to the present mater, with this FDO the Board concluded Stevens County was not protecting critical areas as required by the GMA. This lack of protection was based on the County's failure to enact design standard regulations, specifically those set forth in Stevens County Code (SCC) 3.11 and 3.16, to protect all of the functions and values of critical areas in regards to development-related impacts arising from impervious surface coverage and storm water runoff.[3] The Board ordered the County to take legislative action to bring itself into compliance with the GMA no later than February 3, 2009.[4]

On February 2, 2009, the County took legislative action with the adoption of Ordinance No. 3-2009 and, after a Compliance Hearing, the Board issued is First Order on Compliance (Compliance Order) on April 16, 2009.

With this Compliance Order, the Board addressed two issues. First, whether Stevens County violated the GMA's public participation requirements when adopting Ordinance No. 3-2009 and, second, whether, based on the issues for which the Board found Stevens County non-compliant in the October 2008 FDO, SCC 3.11 and SCC 3.16 provided for design standards which protected the functions and values of critical areas in Stevens County as required by the GMA.

Although the Board found the County had provided public participation which was effective and appropriate given the circumstances, the Board concluded the County had failed to fully implement the October 2008 Final Decision and Order and comply with the GMA.[5] It is the Board's conclusion in this regard the County now seeks reconsideration of.

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[3] FDO, at 41-53.
[4] October 6, 2008 FDO at 66.
[5] April 16, 2009 First Compliance Order, at 16, 24

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II. DISCUSSION and ANALYSIS

A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832. It provides, at WAC 242-02-832(2), that a motion for reconsideration must be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;
(b) Irregularity in the hearing before the Board by which such party was prevented from having a fair hearing; or
(c) Clerical mistakes in the final decision and order (FDO).

Stevens County bases its Motion for Reconsideration on alleged errors of procedure and misinterpretation of fact or law (WAC 242-02-832(2)(a)).[6]

1. Procedural Errors:

Stevens County, after recounting the procedural history of this matter in relationship to motions previously filed by the County seeking dismissal of the Petition for Review (PFR) based on Petitioners' issue statements, contends once again the issue statements presented and addressed by the Board in the FDO were not detailed. In fact, Stevens County asserts neither the Petitioners nor the Board complied with WAC 242-02-210's requirement for a detailed issue statement specifying the provision of the document being appealed.[7]

In response to this contention, Petitioners assert Steven County's request for reconsideration on this basis is time-barred.[8] The Board agrees.

As Stevens County points out in its Motion, the question as to whether or not the issue statements in this matter were sufficient was thoroughly addressed in the June 30, 2008, Order on Respondent's Motion to Dismiss and was based on issue statements

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[6] County's Motion, at 1 and 3.
[7] County's Motion, at 2-4. Stevens County implies the Board crafted the issue statements; however, the issues statements set forth in the FDO were verbatim of those presented by the Petitioners in their October 2007 Revised PFR.
[8] Petitioners' Response, at 2.

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adopted, verbatim, from the Petitioners' October 22, 2007, Revised PFR.[9] Any reconsideration of the Board's decision stemming from the June 2008 Order was due no later than ten days after service of the decision; which was a due date of July 10, 2008. Stevens County did not file a timely request for reconsideration and may not do so ten months later.[10] Since Stevens County's motion is not properly before the Board, the Board strikes and will not address any assertions presented by the County in relationship to this alleged procedural error.

Conclusion

Stevens County's request for reconsideration based on procedural errors related to Petitioners' issue statements is **DENIED**.

2. Misinterpretations of Fact and Law

Stevens County contends the Board misinterpreted fact or law in several regards. First, the County argues the Board "introduced concern" about the development related impacts of storm water run-off and impervious surfaces in urban growth areas (UGAs) in the Compliance Order.[11] Second, the County asserts the GMA does not require storm water management standards or limitations on impervious coverage to protect critical areas.[12] And, lastly, the County states its development regulations, SCC Title 3, in conjunction with its Critical Areas Ordinance (CAO), Title 13, with consideration given to property rights, complies with the GMA.[13]

In response, Petitioners assert the County is setting forth argument related to "the form and statement of the issues," which is not properly before the Board.[14] In addition,

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[9] June 30, 2008 Order on Respondent's Motion to Dismiss, at 6-11.
[10] See *Henderson, et al v. Spokane County,* Case No. 08-1-0002, Order on Motions, at 4 (July 21, 2008)(Denying Intervenor's Motion for Reconsideration filed two month after issuance of the Board's Order).
[11] County's Motion, at 4-6.
[12] County's Motion, at 6-7.
[13] County's Motion, at 7-9
[14] Petitioners' Response, at 2-3.

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Petitioners contend the County is simply re-arguing issues previously considered and ruled on by the Board in the Compliance Order.[15]

As the Board noted *supra,* Stevens County's assertions for reconsideration in relationship to a misinterpretation of law or fact based on the sufficiency of the issue statements are not properly before the Board and will not be addressed. In regards to the Board's conclusions as to the development-related impacts of impervious coverage within urban areas, although Petitioner Wagenman is a rural land owner and examples provided by Petitioners related to rural lands, the Petitioners specifically cited to SCC 3.11, 3.16, and 3.20 and set forth argument in relationship to impacts on a "watershed" basis – an area which can encompass both rural and urban areas. Therefore, it was the County's error, not the Board's, as to the scope of the impacts related to impervious coverage and any mis-read of the Board's FDO is the County's alone.[16]

Within the FDO, the Board explicitly noted that setting limitations for impervious surface within SCC 3.11 Subdivisions [which includes SCC 3.11.236 Design Standards – UGAs] and SCC 3.16 Short Subdivisions [which includes SCC 3.16.236 Design Standards – UGAs] would serve to protect critical areas *throughout* Stevens County.[17] Thus, concern about impervious coverage within urban areas was not "introduced" by the Board in the Compliance Order but was clearly articulated in the October 2008 FDO.

Therefore, similar to the County's argument in regards to the issue statements, any dispute related to findings and conclusions set forth in the Board's October 2008 FDO were due no later than October 16, 2008. For that reason, Stevens County's request for reconsideration based on inclusion of the urban design standards of SCC 3.11 and SCC 3.16 is DENIED.

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[15] Petitioners' Response, at 2-5.
[16] See e.g. Western Washington GMHB - *Abernoth v. Skagit County,* WWGMHB Case No. 97-2-0060, Compliance Order (March 29, 1999)(Where a county bases its motion for reconsideration on a misreading of the Board's order, the motion will be denied).
[17] October 2008 FDO, at 50, 53.

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As for the balance of the County's Motion for Reconsideration, related to storm water management standards and limitations on impervious coverage to protect critical areas, the County's argument for reconsideration based on fact or law introduces no additional authorities[18] but simply reargues the case, with the County reaching a different conclusion than the Board in application of the governing statutory and case law to the case at hand.[19] However, despite this second attempt to convince the Board its development regulations will protect the critical areas of Stevens County from development-related impacts based on impervious coverage and storm water runoff as required, the Board is not persuaded that it erred in its application of the law or misinterpreted facts regarding critical areas under the GMA.[19] Thus, Stevens County's request for reconsideration in these regards is DENIED.

Conclusion

Stevens County's request for reconsideration based on misinterpretation of fact and/or law is **DENIED.**

III. ORDER

Having reviewed Stevens County's Motion for Reconsideration, the Petitioners' Response, the October 2008 Final Decision and Order, the April 2009 First Compliance

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[18] The Board notes, as did Petitioners, the County, without seeking supplementation of the Remanded Index, attaches a new exhibit – the *Stormwater Manual* – and utilizes excerpts from this document to support its request. This Board has previously held, and continues to hold today, not only must any new evidence be properly submitted to the Board but that a Motion for Reconsideration is not the time to present new evidence to the Board. Any supporting evidence was required prior to issuance of the Board's Order, not after. See *Kittitas County Conservation, et al v. Kittitas County,* Case No. 07-1-0004c, Order on Reconsideration, at 4 (March 2, 2009).

[19] See *Concerned Friends of Ferry County v. Ferry County,* Case No. 97-1-0018, Order on Motion to Reconsider (Sept. 29, 1999)(In denying the motion, the Board noted that a motion for reconsideration was an opportunity for the parties to point out factual or legal errors; it was not an opportunity for the presentation of new evidence or re-arguing an issue). See also: Central Puget Sound GMHB – *Suquamish, et al v. Kitsap County,* CPSGMHB Case No. 07-3-0019c, Order on Motion for Reconsideration, at 3 (Sept. 13, 2007)(Petitioners simply reargue, or attempt to offer new argument pertaining to the issues; this does not warrant reconsideration); Western Washington GMHB - *Brinnon Group, et al v. Jefferson County*, WWGMHB Case No. 08-2-0014, Order on Reconsideration at 4 (Oct. 14, 2008)(While it is true that the Board has previously held that Motions for Reconsideration will be denied when they present no new arguments that were not previously considered in the original decision, this is not to say that the opposite is true, i.e. that a Motion for Reconsideration is an opportunity to present new arguments that could have been presented at the Hearing on the Merits (HOM), but were not).

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Order, and the relevant provisions of the GMA and the Board's Rules of Practice and Procedure, the Board finds Stevens County has provided neither a basis in error of procedure or error of law or fact that compels further reconsideration of the April 16, 2009, First Order on Compliance. Consequently, Stevens County's Motion for Reconsideration is **DENIED in its entirety.**

The Board's FDO October 2008, as modified by the April 2009 First Compliance Order, is still in effect. Stevens County is expected to take legislative action to bring itself into compliance with the Growth Management Act no later than **August 14, 2009**.

SO ORDERED this 8th day of May 2009.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
Joyce Mulliken, Board Member

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John Roskelley, Board Member

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Raymond L. Paolella, Board Member

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