

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

JEFFERSON COUNTY HOMEBUILDERS)	
ASSOCIATION, WILLIAM ELDRIDGE, DAVE)	No. 96-2-0029
CLEVINGER, and HAROLD MOE,)	
)	ORDER ON
Petitioners,)	MOTION
)	
vs.)	
)	
CITY OF PORT TOWNSEND,)	
)	
)	Respondent,
and)	
)	
PORT OF PORT TOWNSEND,)	
)	Intervenor.
_____)	

On September 13, 1996, Jefferson County Homebuilders Association, William Eldridge, Dave Clevenger and Harold Moe jointly filed a petition challenging the comprehensive plan (CP) of the City of Port Townsend. The prehearing conference was held October 15, 1996.

On October 11, 1996, we received a 16 page document, plus exhibits, from the City of Port Townsend entitled "City of Port Townsend's Statement of Legal Issues for Prehearing Conference". The statement bemoaned the lack of participation by any of the petitioners in the public process leading up to the adoption of the CP. The statement also complained about the lack of specificity as to the issues contained in the petition. Finally, the statement noted that a motion by the City to challenge the standing of petitioners under RCW 34.05.530 (APA standing) would likely be forthcoming. The document acknowledged that Mr. Eldridge had "appeared" through the sending of a letter dated March 7, 1996, (Ex. 194) which letter supported the action of the proposed CP. At pg. 9 of the statement the City also noted that Mr. Eldridge owned property within the city limits and that the City would "stipulate" to his APA standing.

That same day the Port of Port Townsend filed a motion to intervene. The Port raised some issues

similar to petitioners' and some that were unique to the Port.

On October 14, 1996, in response to the City's statement, petitioners filed an amended petition. The amended petition set forth more specific issues and addressed the basis of petitioners' APA standing.

At the prehearing conference on October 15, 1996, the City stated that with a few modifications later incorporated into the prehearing order, the amended petition adequately set forth the issues to be addressed. The City reiterated that a challenge to petitioners' APA standing would be filed. Finally, the City did not object to the intervention of the Port but specifically requested that the Port be limited only to issues different than the ones presented by petitioners.

An Order granting intervention was entered October 17, 1996. The prehearing Order, entered the same date, set forth the issues for petitioners and for the Port and fixed a deadline of October 28, 1996, for the filing of motions. On that date we received a motion from the City concerning petitioners' standing and a motion from petitioners requesting submission of supplemental evidence. A hearing on those motions took place in Port Townsend on November 14, 1996. The Port did not submit a brief on the issues but did participate in the hearing.

SUPPLEMENTAL EVIDENCE

Petitioners' motion to supplement the record requested that two "expert witnesses" be allowed to present evidence. These witnesses were Mr. Al Scalf, the current Director of Community Development for Jefferson County and Mr. Mark Horton of Environmental and Engineering Services located in Olympia. Petitioners' motion contended that the issues were complex and the evidence to be presented by these two gentlemen would substantially assist the Board in review of those issues.

In reality petitioners' motion does not ask for supplemental evidence, but rather expert opinion interpreting the evidence in the record. Petitioners have not shown how the issues in this case are not amenable to decision by the Board but rather require extraordinary assistance. Even if we assume that expert opinion constitutes supplemental evidence, we specifically find that it is not necessary nor would it be of substantial assistance to us. Therefore the test set forth in RCW 36.70A.290(4) and WAC 242-02-540 is not met and petitioners' motion is denied.

STANDING

It is axiomatic that without a party with standing we have no jurisdiction to consider a challenge. *Postema v. Snohomish County*, 85 Wn. App. 574 (1996). Our only other case involving an APA standing challenge was *Loomis v. Jefferson County*, #95-2-0066 (Order, June 1, 1995) (*Loomis*). In that case a majority questioned whether the strict "two-prong" test of *Trepanier v. Everett*, 60 Wn. App. 380 (1992) (*Trepanier*) was the proper test for review of GMA standing because of the vast differences between GMA and State Environmental Policy Act (SEPA) challenges. Port Townsend pointed out that subsequent to that decision the Supreme Court answered the issue in the cases of *St. Joseph Hospital v. Department of Health*, 125 Wn. 2d 733 (1995) and *Trades Council v. Training Council*, 129 Wn. 2d 787 (1996). We agree. In those cases the Supreme Court affirmed adoption of the two-prong analysis for APA cases. Any language to the contrary in the majority opinion in *Loomis* is overruled.

In reviewing the language of RCW 34.05.530 the Court noted that subsections (1) and (3) equated with the "injury-in-fact" requirement of the test and that subsection (2) equated with the "zone of interest" requirement. Thus, we must decide whether each of the petitioners qualifies under this test. In petitioners' response brief, Mr. Harold Moe was withdrawn as a petitioner. We will address the claims of the other three.

Parenthetically, we note that language in state and federal appellate court cases often fails to distinguish between allegations and proof being required by those claiming standing. Many cases talk about the necessity for claimants to "allege" injuries and interest. Many cases talk about the necessity for claimants to "prove" standing. In our case no affidavits were filed. While we do not decide this case on that basis, we note that the City's contention that affidavits are the appropriate method of showing standing appears to be correct. We strongly recommend that future claimants file affidavits supporting APA standing, rather than relying upon the allegations in their petition or briefing.

The record reveals that petitioner Dave Clevenger does not own property within the City of Port Townsend and does not have any pending construction nor development applications. In that circumstance he has failed to demonstrate that he has a zone of interest sufficient to meet the two-prong test. Petitioner William Eldridge does own property in Port Townsend but does not have any current application concerning that property with the City. While he may have satisfied the zone of interest test, he has not shown that the injury-in-fact test has been met. Ex. 194 shows that the CP

will benefit rather than injure him. That fact distinguishes his situation from *Loomis*.

We also find that petitioner Eldridge does not have APA standing even though the City's October 11, 1996, statement "stipulated" that he did. The City contended that it withdrew its stipulation prior to acceptance by petitioners as shown in the briefing accompanying the motion to dismiss Eldridge. We question whether the petitioners had to "accept" this stipulation for it to be effective but nonetheless decide the issue on its merits.

Petitioners Jefferson County Homebuilders Association have not alleged nor shown sufficient facts to meet the injury-in-fact prong of the test. Arguably the zone of interest test was met because the membership allegedly consists of people who own property within city limits and are currently conducting construction and/or development activities. That allegation did not include any specifics about which of the members fell within the zone of interest, but merely made the generalized conclusionary statement that certain of them did. This is insufficient to show that the organization qualifies for APA standing.

Based on the evidence before us as submitted by the City, we find that petitioner Eldridge has appearance standing under RCW 36.70A.280(2)(b). On pg. 14 of its brief in support of the motion to dismiss, the City noted that under .280(2)(b) "a party need only write a non-specific, vacuous letter to the local government during the GMA legislative process in order to have standing...." At the hearing and in its briefing the City contended that a petitioner must specifically set forth standing claims in the petition. No such requirement is found in the GMA. We are not disposed to dismiss a petition based upon such legal niceties particularly when the record is crystal clear that Mr. Eldridge did participate by means of a letter. The October 11, 1996, statement submitted by the City which led to petitioners' amended petition focused on APA standing. Thus, it is understandable why petitioner Eldridge did not address his appearance standing claim.

The City's motion to dismiss for lack of APA standing is granted. Petitioner Eldridge has appearance standing to continue this case.

DATED this 27th day of November, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member