

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

LIVEABLE LA CONNER and JOHN KAGURAS,)	No. 98-2-0002
Petitioners,)	
)	ORDER DENYING
v.)	MOTION SEEKING
)	TO EXCLUDE
THE TOWN OF LA CONNER and THE WASHINGTON)	LIVEABLE
STATE DEPARTMENT OF ECOLOGY,)	LA CONNER
)	
Respondents,)	
)	
and)	
)	
LA CONNER ASSOCIATES, L.L.C. and VAUGHN W.)	
JOLLEY, and CRAIG DORSEY d/b/a LA CONNER)	
PIER,)	
)	
Intervenors.)	
_____)	

On May 12, 1998, we received from Intervenor Craig Dorsey, d/b/a/ La Conner Pier (Dorsey) a motion to exclude Petitioner Liveable La Conner. We later received a joinder from Intervenor La Conner Association, L.L.C. and Vaughn W. Jolley (Jolley). Liveable La Conner responded on May 27, 1998, and presented alternative motions to intervene.

Argument on the motion was heard June 10, 1998. Alexander Mackie presented arguments for the motion for Intervenors Jolley and Dorsey and Respondent Washington State Department of Ecology (WSDOE). Arguing against the motion were Michael Gendler, representing Liveable La Conner and John Kaguras, and Brad Furlong representing the Town of La Conner. Les Eldridge and William H. Nielsen were present for the Board.

Intervenors and WSDOE agreed that Liveable La Conner, as an informal organization, participated fully in the adoption process. Intervenors and WSDOE pointed out that Liveable La Conner's status as a nonprofit corporation did not occur until after the Town of La Conner

adopted Ordinance #705, the action challenged by their petition. They argued that exclusion would be consistent with our decision in Case #97-2-0030c in which we concluded that Whatcom Resource Watch (WRW) lacked standing to pursue a petition because it did not participate as an organization in Whatcom County's comprehensive plan adoption process.

Intervenors and WSDOE acknowledged that even if the motion was granted, the same issues would remain and the case would go forward because Mr. Kaguras had petitioned as an individual as well as a director of Liveable La Conner. Finally, they argued that Liveable La Conner's motion to intervene, as an alternative, filed in response to Dorsey's motion to exclude was untimely because it was filed after the May 13, 1998, deadline for motions.

Mr. Gendler pointed out that Liveable La Conner now is the same entity with the same individuals known by the same name as it was throughout the adoption process. He further noted that while the motion regarding intervention was a prompt and diligent response to Dorsey's May 13, 1998, motion it, nonetheless, could not have been filed by May 13, 1998, the motions deadline. He contended that to exclude a group known to the community to have participated in the adoption process solely on the basis of its transformation from an informal group to an incorporated group could preclude an otherwise acceptable petition from going forward if, in contrast to this case, there was no separate sole petitioner.

Mr. Furlong echoed Mr. Gendler's arguments and observed that the motion was a striking case of "form over substance." He contended that the motion was contrary to our inclusionary practices regarding citizen petitions. He maintained that the requirements for standing exist to ensure that petitioners were actually involved in meaningful participation which, he averred, was exactly the situation here. According to Mr. Furlong, exclusion could not further the object of the rules on standing and could have a chilling affect on public participation in our part of the Growth Management Act (GMA) process.

In response to a question, Mr. Gendler noted that there would be only one brief from Petitioners rather than the two that Intervenors feared might be forthcoming if this motion were denied.

CONCLUSION

We note the distinction between this case and #97-2-0030c regarding WRW. WRW was formed as a group of petitioners after the submission of a petition and for convenience of representation. It did not exist as an entity during the adoption process for Whatcom County's comprehensive plan. In contrast, Liveable La Conner was an identifiable entity whose active participation in the adoption process for Ordinance #705 is unchallenged.

We are persuaded by the argument that exclusion of a clearly identifiable, actively participating community group, solely on the basis of a subsequent incorporation, could have a chilling affect on public participation and is not mandated by any section of the GMA. There is no injury to Respondents or Intervenors from maintaining Liveable La Conner as a participant in this proceeding.

The motion is denied.

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We note that Intervenor Dorsey was aware that the incorporation date of Liveable La Conner postdated the action of the Town Council as early as March 12, 1998, two months in advance of his motion. Had we granted his motion, we would have granted Liveable La Conner's motion for intervenor status as an alternative ground for their continued participation.

So ORDERED this 19th day of June, 1998

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member