

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

MICHAEL L. ACHEN AND CATHERINE)	
J. ACHEN,)	
)	No. 99-2-0040
Petitioners,)	
)	ORDER DENYING
v.)	MOTION FOR
)	RECONSIDERATION
CITY OF BATTLE GROUND,)	
)	
Respondent.)	
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On May 16, 2000, we issued a final decision and order (FDO) in this case. On May 26, 2000, we received a motion for partial reconsideration from the City of Battle Ground (City). On June 5, 2000, we issued a memo inviting response to this motion. On June 8, 2000, we received a memorandum in opposition from Petitioners Michael L. and Catherin J. Achen (Petitioners).

The City, in its motion, stated in part:

“This motion is made for the reason that an issue raised by the City was not considered in the Decision, and its correct resolution requires a ruling on the SEPA compliance issue in favor of the City.”

The City went on to reiterate arguments that it presented in its previous briefing:

1. Although Petitioner participated fully in the process leading up to the adoption of the City’s fire capital facilities plan, Petitioners made no mention of SEPA compliance or the existence of any significant adverse environmental impacts of the proposed plan.
2. Petitioners have another remedy since they have raised the identical SEPA-related issue in their parallel action pending in Clark County Superior Court.
3. Because Petitioners did not raise SEPA compliance while the plan was under consideration prior to its adoption, they do not have participation standing to raise that issue in this proceeding before us.

4. Therefore, we should rule that Petitioners lack standing to raise SEPA compliance in this action and rescind the remand based on that issue.

Petitioners in their response, reiterated many of the opposing arguments they had made in their prehearing briefs and added additional arguments. A few of their key response points were:

1. The City's motion fails to demonstrate any valid ground for reconsideration under WAC 242-02-832(2).
2. The City now challenges "participation standing" based on the allegation that it is Petitioners' duty, rather than the City's, to initiate non-project SEPA review. Petitioners have no such duty.
3. The City's analysis omits the important fact that SEPA procedures are dependent on the timing and performance of the City's duties under the Act, particularly, the City's duty to notify the public of its actions. In the absence of such notice, interested parties are clearly denied an opportunity to engage in environmental review.
4. In short, there can be no lack of "participation standing" where there was no hearing in which to participate.

Before issuing the FDO, we seriously considered the City's original arguments regarding Petitioners' lack of "participation standing" to raise SEPA issues before rendering the FDO. We did not believe it necessary to discuss in the FDO every argument raised by the parties in their briefs. It is obvious that it is not Petitioners' duty to comment in order to raise an issue of the City's failure to prepare a SEPA threshold determination on the proposed ordinance where no opportunity for such public participation was provided.

The City's motion for reconsideration is denied.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 14th day of June, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

Les Eldridge
Board Member

William H. Nielsen
Board Member