

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3 Advocates for Responsible Development and  
4 John E. Diehl,

Case No. 07-2-0006

5  
6 Petitioners,

**ORDER ON STANDING**

7 v.

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9 Mason County,

10 Respondent,

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12 Shaw Family LLC,

13 Intervenor.  
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16 THIS Matter comes before the Board upon the motions of the Shaw Family LLC (Shaw  
17 Family) and Mason County to dismiss the Petition for Review based on the lack of standing  
18 of the Petitioners.<sup>1</sup> Mason County also raises other bases for its motion to dismiss certain  
19 claims which will be addressed by separate order. Petitioners oppose the motions to  
20 dismiss for lack of standing, asserting that they participated before the County in the  
21 adoption process and therefore have standing.<sup>2</sup>  
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24 **DISCUSSION**

25 **Positions of the Parties**

26 The Shaw Family LLC, Intervenor in this case, argues that John E. Diehl did not participate  
27 as an individual in any proceedings below and that Advocates for Responsible Development  
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31 <sup>1</sup> Motion to Dismiss, April 25, 2007 (Intervenor's motion); Respondent Mason County's Motion to Dismiss  
32 Petitioners' Petition for Review and Memorandum in Support of Motion to Dismiss, April 25, 2007.

<sup>2</sup> Motion for Order Requiring County to Index the Record in Compliance with Order of March 2 and Response  
Opposing Motions to Dismiss, May 7, 2007.

1 is not a bona fide entity.<sup>3</sup> Although admitting that ARD provided written comments prior to  
2 adoption of amendments to the County's Resource Ordinance related to Critical Areas, the  
3 County argues that neither Petitioner has standing because their written comments were  
4 submitted after the comment period was closed.<sup>4</sup>  
5

6 Petitioners respond with five arguments: (1) that the County does not have the authority to  
7 restrict the time for public comments so long as they are given during the adoption process;  
8 (2) that there was no legal public notice of any time restrictions on public comments; (3) that  
9 there is no basis for restricting written comments when oral comments were allowed; (4) that  
10 the County allowed written comments from other sources after the comment period it now  
11 asserts; and (5) that the County actually did accept the Petitioners' comments, including  
12 them in the record and allowing a response to them prior to taking legislative action.<sup>5</sup>  
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#### 15 **Board Discussion**

16 Both ARD and John Diehl allege standing on the basis of written comments submitted to the  
17 Board of County Commissioners "on the matters for which review is being requested".<sup>6</sup>  
18 Such standing, known as "participation standing", is granted to "a person who has  
19 participated orally or in writing before the county or city regarding the matter on which a  
20 review is being requested."<sup>7</sup> A "person", for purposes of GMA standing, means "any  
21 individual, partnership, corporation, association, state agency, governmental subdivision or  
22 unit thereof, or public or private organization or entity of any character."<sup>8</sup>  
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29 <sup>3</sup> Motion to Dismiss at 1.

<sup>4</sup> *Ibid.*

30 <sup>5</sup> Motion for Order Requiring County to Index the Record in Compliance with Order of March 2 and Response  
31 Opposing Motions to Dismiss at 3-5

<sup>6</sup> Petition for Review, Paragraph 4.

32 <sup>7</sup> RCW 36.70A.280(2)(b)

<sup>8</sup> RCW 36.70A.280(3)

1 A review of the comment letters submitted (Exhibits 2 and 3 to the County's motion) shows  
2 that in both instances Mr. Diehl was the author of the comment letters but that he  
3 specifically stated that he was submitting them on behalf of ARD:

4 In behalf of Advocates for Responsible Development I am submitting the following  
5 comments on the August draft of proposed regulations for Master Development Plans  
6 (MDPs):

7 Exhibit 2, September 11, 2006 comment letter.

8 In behalf of Advocates for Responsible Development, I am writing to comment on (1)  
9 the proposed Shaw Rezone of land designated as long-term commercial forest land,  
10 creating the potential for a multitude of small inholding parcels; and (2) review and  
11 update of the Resource Ordinance, as required by RCW 36.70A.130, including  
12 proposed revisions.

13 Exhibit 3, December 19, 2006 comment letter.

14 Based on these comment letters, John Diehl has not established standing to bring his  
15 petition for review as an individual. Examination of the bases for his participation standing  
16 under RCW 36.70A.280(2)(b) shows that Mr. Diehl specifically raised his comments "in  
17 behalf of Advocates for Responsible Development" only. It was Mr. Diehl himself who  
18 limited the attribution of his comments to ARD. Since he expressly did not participate in his  
19 individual capacity, he does not have participation standing in his individual capacity.

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21 Advocates for Responsible Development (ARD), on the other hand, did participate in writing  
22 "regarding the matter on which review is being requested". Intervenor argues that ARD is  
23 not a *bona fide* entity because it is not registered with the Secretary of State or the  
24 Department of Revenue.<sup>9</sup> Intervenor states that it cannot find evidence of the existence of  
25 ARD.<sup>10</sup> Mr. Diehl responds that ARD has existed as a nonprofit association and  
26 participated in cases before the Western Board for a decade.<sup>11</sup> Since the definition of a  
27 "person" under the standing provisions of the GMA includes "any... entity of any character",  
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31 <sup>9</sup> Declaration of Counsel at 2.

32 <sup>10</sup> *Ibid.*

<sup>11</sup> Declaration of John E. Diehl in Motion for Order Requiring County to Index the Record in Compliance with  
Order of March 2 and Response Opposing Motions to Dismiss at 2

1 the Board finds that this is sufficient. ARD is a “person” for purposes of participation  
2 standing under RCW 36.70A.280(2)(b). Therefore, ARD has standing to challenge the  
3 matters raised in its written comments under RCW 36.70A.280(2)(b).  
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5 As to the County’s arguments that the Petitioners’ comment letters were not timely, Mr.  
6 Diehl responds that Petitioners did not submit their comment letters for the November 28,  
7 2006 hearing because they had learned that the hearing would be continued to allow staff to  
8 revise drafts of the proposed ordinances.<sup>12</sup> He further states that the revised drafts were  
9 not available until December 14<sup>th</sup> and the comment letter was prepared with all-night effort  
10 for the December 19<sup>th</sup> public hearing.<sup>13</sup> He also notes that the hearing was again continued  
11 after Petitioners comments (to December 27<sup>th</sup>) and that 9 pages of comments were  
12 submitted dated December 22 by GeoEngineers.<sup>14</sup>  
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15 The Board does not agree with Petitioners’ argument that the County lacks authority to set a  
16 comment period. However, such a comment period must be well-publicized and calculated  
17 to encourage public comment in order to achieve the public participation goal and  
18 requirements of the GMA. The public participation goal and requirements of the GMA  
19 impose a duty on a local government to provide effective notice and opportunities for early  
20 and continuous public participation.<sup>15</sup> In this case, the only evidence that a time limitation  
21 had been placed on the comment period comes from the minutes of the Commissioners’  
22 Proceedings for November 28, 2006. (Exhibit 1 to County motion). There is no evidence  
23 before the Board showing that there was public notice of a limited comment period before  
24 the November 28, 2006 public hearing and no evidence that the time limitation on written  
25 comments after the November 28<sup>th</sup> public hearing was published. This is not sufficient notice  
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30 <sup>12</sup> Declaration of John E. Diehl in Motion for Order Requiring County to Index the Record in Compliance with  
31 Order of March 2 and Response Opposing Motions to Dismiss at 2

32 <sup>13</sup> *Ibid* at 2-3.

<sup>14</sup> *Ibid* at 3.

<sup>15</sup> RCW 36.70A.020(11); 36.70A.035; 36.70A.140.

1 to apprise the public that written comments will not be accepted at a public hearing on  
2 proposed legislation.<sup>16</sup>  
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4 Further, the evidence presented is that the County accepted the written comments of ARD  
5 and allowed further response to them. Under these circumstances, the Board finds that  
6 ARD participated in the proceedings before the County below and has standing to raise the  
7 issues in its petition for review.  
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9 **ORDER**

10 Based on the foregoing, the motion to dismiss John Diehl as a petitioner in this case for lack  
11 of standing is hereby GRANTED. The motion to dismiss Advocates for Responsible  
12 Development as a petitioner for lack of standing is hereby DENIED.  
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14 ENTERED this 21st day of May 2007.  
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18 Margery Hite, Board Member  
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21 Holly Gadbow, Board Member  
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24 James McNamara, Board Member  
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<sup>16</sup> See *Dunlap v. Nooksack* WWGMHB Case No.06-2-0001 (Final Decision and Order, July 7, 2006).