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BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

LAUREL PARK COMMUNITY LLC,
MANUFACTURED HOUSING COMMUNITIES OF
WASHINGTON, AND TUMWATER ESTATES
INVESTORS,

Petitioners,

v.

CITY OF TUMWATER,

Respondent.

Case No. 09-2-0010

**ORDER ON CITY'S MOTION TO
DISMISS ISSUE 6**

THIS Matter comes before the Board upon the motion of the City of Tumwater ("City") to dismiss Issue 6 from this appeal.¹ Petitioners do not directly oppose the motion, but argue it would be error to dismiss this issue with prejudice.²

DISCUSSION

Positions of the Parties

City's Position

The City requests the Board dismiss Issue 6 from this appeal as the parties agree the Board lacks jurisdiction over the Constitutional issues raised in that issue statement. The City relies upon the case of *Schlatter v. Clark County*, WWGMHB No. 95-2-0078 (Order Denying Reconsideration, 10/10/95) for the position that the Board lacks jurisdiction to consider this issue.

¹ City's Motion to Dismiss Issue 6, filed June 10, 2009. While the City stated that "The motion is submitted as a formality" and "This request was made in previously submitted correspondence" the Board generally does not take action based on correspondence, but expects the parties to seek any relief by motion in accordance with the Boards' adopted rules.

² Petitioners' Response to City of Tumwater's Motion to Dismiss Issue 6, filed June 22, 2009.

1 Further, the City points out the Petitioners have stated in previous correspondence to the
2 Board that they will not “actively brief or argue” Issue.³

3
4 Petitioners’ Position

5 In response, Petitioners note that they have previously acknowledged the Board does not
6 have subject matter jurisdiction over Issue 6 pursuant to RCW 36.70A.280. However, they
7 object to the dismissal of Issue 6 “to the extent that infers Issue 6 is without merit.”⁴ Thus,
8 they argue that the Board should simply acknowledge that it does not have statutory
9 jurisdiction to consider Issue 6 and that it will not consider it for that reason.⁵ They further
10 argue that should this Issue be dismissed, the dismissal should be made without prejudice
11 as our Supreme Court has held it is error to dismiss with prejudice for lack of jurisdiction.⁶
12

13
14 **Board Discussion**

15 Issue 6, as stated in the Board’s May 28, 2009 Prehearing Order, reads:

16 Do the Manufactured Home Park Amendments violate the takings clause of the
17 United States and Washington Constitutions, violate Petitioners’ equal protection
18 rights under the United States and Washington Constitutions, and violate
19 Petitioners’ substantive due process rights under United States and Washington
20 Constitutions?

21 The Board agrees with the parties that it lacks jurisdiction over the Constitutional issues this
22 Issue raises.⁷

23
24 The jurisdiction of the Growth Management Hearings Boards is set out in RCW
25 36.70A.280(1):

26 (1) A growth management hearings board shall hear and determine only those
27 petitions alleging either:

28 (a) That, except as provided otherwise by this subsection, a state agency,
29
30

31 ³ City’s Motion at 1.

32 ⁴ Petitioners’ Response at 2.

⁵ Id.

⁶ State v. Northwest Magnesite Co., 28 Wn.2d 1, 42 (1947).

⁷ City Motion at 3.

1 county, or city planning under this chapter is not in compliance with the
2 requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of
3 shoreline master programs or amendments thereto, or chapter 43.21C RCW as
4 it relates to plans, development regulations, or amendments, adopted under
5 RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes
6 a board to hear petitions alleging noncompliance with RCW 36.70A.5801; or

7 (b) That the twenty-year growth management planning population projections
8 adopted by the office of financial management pursuant to RCW 43.62.035
9 should be adjusted.

10 This Board has consistently held that it does not have jurisdiction over Constitutional
11 issues.⁸ Issue 6 clearly asks the Board to decide whether the City violated the takings
12 clause of the United States and Washington Constitutions, equal protection rights under the
13 United States and Washington Constitutions, and substantive due process rights under
14 United States and Washington Constitutions. These are matters over which the Board has
15 no jurisdiction. Accordingly, Issue 6 will be dismissed.
16

17 **ORDER**

18 Based on the foregoing, Issue 6, as stated in the Prehearing Order is hereby DISMISSED.
19

20 DATED this 29th day of June, 2009.
21

22
23 _____
24 James McNamara, Board Member

25
26 _____
27 William Roehl, Board Member

28
29 _____
30 Nina Carter, Board Member

31 _____
32 ⁸ See, eg. *In re Harborview Estates, Inc.*, WWGMHB No. 94-2-0008, Order of Dismissal, (7/x/94); *Citizens for Rational Shoreline Planning, et al. v. Whatcom County*, WWGMHB No. 08-2-0031, Order on Dispositive Motion, (1/16/09)(Holding that the Legislature did not grant the Board with authority to consider constitutional issues).

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