

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 SKAGIT HILL RECYCLING, INC. AND SCOTT
3 WALDAL,

Case No. 09-2-0011

4 Petitioners,

**ORDER DENYING PETITIONER'S
MOTION TO STRIKE**

5
6 v.

7 SKAGIT COUNTY AND SKAGIT COUNTY
8 COMMISSIONERS,

9 Respondents.
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13 THIS Matter comes before the Board on Skagit Hill Recycling's and Scott Waldal's
14 (collectively, "Skagit Hill Recycling" or "Petitioners") Motion to Strike Skagit County's
15 Substantive Motions and Skagit County's Motion to Supplement the Record, filed August
16 12, 2009. Skagit County filed a response to this Motion on August 17, 2009.¹
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18 **DISCUSSION**

19 On August 10, 2009, Skagit County filed four motions with the Board. The first three
20 motions seek the dismissal of each of Petitioners' issues.² The fourth motion seeks
21 supplementation of the Record.³ In response to these motions, on August 12, 2009, Skagit
22 Hill Recycling submitted a motion to strike all of the County's motions, contending the
23 County had (1) violated the Board's orders, (2) ignored clear precedent, and (3) prejudiced
24 the Petitioner's ability to respond.⁴
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27 The Board notes that in the Petitioners' Motion to Strike, Petitioners claim the "Board's
28 Presiding Officer told the County during the Prehearing Conference that the Board would
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31 ¹ Skagit County's Response to Motion to Strike Substantive Motion.

32 ² Skagit County's First Substantive Motion RE: Issue 1; Skagit County's Second Substantive Motion RE: Issue 2; Skagit County's Third Substantive Motion RE: Issue 3.

³ Skagit County's First Motion to Supplement the Record.

⁴ Petitioner's Motion to Strike, at 1.

1 not entertain a summary judgment motion in this case".⁵ The Petitioners misunderstood the
2 Presiding Officer's statement. The Board did not restrict parties from filing motions as
3 claimed by Skagit Hill Recycling⁶ and, the Prehearing Order's schedule, which was issued
4 after the Prehearing Conference and includes a deadline for substantive motions,
5 substantiates this fact.⁷
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7 In the Board's July 28, 2009 Prehearing Order, the parties were clearly permitted to file
8 Substantive Motions by August 10, 2009 and to file Motions to Supplement the Record by
9 August 17, 2009. If the Petitioner believed that the parties were restricted from filing
10 motions, then they should have objected to the Prehearing Order within 7 days of the
11 Prehearing Order's issuance as provided by WAC 242.02.558(10). The Board received no
12 objections and the time for filing has long since passed.
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15 In addition to seeking to strike Skagit County's Substantive Motions, Petitioners request the
16 Board strike the County's Motion to Supplement the Record. Petitioners contend that the
17 County has violated the requirements of the Prehearing Order which states all exhibits must
18 be attached to the motion.⁸ While it is true that the County failed to attach the proposed
19 exhibits to its Motion to Supplement, it did attach all of the exhibits to its First Substantive
20 Motion. The Motion to Supplement was filed contemporaneously with the County's First
21 Substantive Motion and clearly states that copies of the proposed exhibits were attached to
22 the First Substantive Motion.⁹ Although technically a violation of the Board's requirements,
23 the exhibits were simultaneously presented and cross-referenced by the County. The
24 Board sees no basis for striking the County's Motion on this small technicality and the
25 Petitioners' were not prejudiced as the exhibits were before them.
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30 ⁵ Petitioner's Motion to Strike, at 2.

31 ⁶ Petitioner's Motion to Strike, at 2.

32 ⁷ WWGMHB Prehearing Order at 2, July 28, 2009.

⁸ Petitioner's Motion to Strike, at 6.

⁹ County's Motion to Supplement, at 1. In addition, the County's First Substantive Motion clearly states that the attached exhibits were subject to the Motion to Supplement. County's Substantive Motion, at 2-3.

1 Therefore, the Board DENIES the Petitioners' Motion to Strike Substantive Motion and
2 Motion to Supplement.

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4 The Petitioners state in their Motion to Strike that should their motion be denied, they
5 request more time to respond to the County's issues.¹⁰ The Board has agreed to extend
6 the deadline for Petitioner's Response to Substantive Motions to August 24, 2009.

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8 The Board further notes that in its original motions and with its response to Petitioner's
9 Motion to Strike, Skagit County requested the Board hear oral argument for the motions.
10 The Board is granting this request and has scheduled oral argument for September 3, 2009
11 at 10 am.

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13 Given the extension for the Petitioner's response and the motions hearing, the revised
14 schedule is shown below. Dates shown in bold are changed from the original Prehearing
15 Order of July 28, 2009.

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18 **REVISED SCHEDULE**

19 The following schedule shall remain in effect unless modified in writing by subsequent order:

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May 21, 2009	Petition For Review Filed
June 1, 2009	Notice of Hearing and Preliminary Schedule
June 22, 2009	Index Filed by Respondent
July 27, 2009	Prehearing Conference
August 10, 2009	Deadline for Substantive Motions
August 17, 2009	Deadline for Motions to Supplement the Record (proposed supplements to be attached)
August 24, 2009	Deadline for Response to Substantive Motions
August 27, 2009	Deadline for Response to Motions to Supplement the Record

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¹⁰ Petitioner's Motion to Strike, at 7.
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1	September 3, 2009	Oral Argument on Motion Call 360 407-3780 pin 573873#
2	September 9, 2009	Anticipated date of Order on Substantive Motions and
3		Motions to Supplement the Record
4	September 16, 2009	Deadline for Petitioner's Prehearing Brief (with exhibits)
5		
6	September 30, 2009	Deadline for Respondent's Prehearing Brief (with exhibits)
7	October 7, 2009	Deadline for Petitioner's Reply Brief (optional)
8	October 14, 2009	Hearing on Merits of Petition
9		Location to be determined
10	November 17, 2009	Final Decision and Order Deadline

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12 **ORDER**

13 Based upon a review of the record in this case and having considered the briefing submitted
 14 by the parties, the Board orders the following:

- 15
- 16 1. Petitioner's Motion to Strike Substantive Motion and Motion to Supplement is
 17 DENIED.
- 18 2. An extension to August 24, 2009 is GRANTED to allow Petitioner's to respond to
 19 the County's motions.
- 20 3. Oral arguments on the County's Motions are scheduled for September 3, 2009.

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22 Dated this 24th day of August, 2009.

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24 _____
 25 Nina Carter, Board Member

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 28 James McNamara, Board Member

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 31 William Roehl, Board Member

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