

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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DANIEL J. EVANS, BOOTH GARDNER, ALBERT  
D. ROSELLINI, RALPH MUNRO, NORMAN J.  
JOHNSTON, THE PORTICO GROUP, MICHAEL S.  
HAMM, OLYMPIA ISTHMUS PARK ASSOCIATION,  
GERALD REILLY, FRIENDS OF THE  
WATERFRONT and ROBERT V. JENSEN,

Petitioners,

v.

CITY OF OLYMPIA,

Respondents,

And

TRIWAY ENTERPRISES, LLC, a Washington  
limited liability company, and CAPITAL SHORES  
INVESTMENTS, LLC, a Washington limited liability  
company,

Intervenors.

Case No. 09-2-0003

**ORDER DENYING MOTION TO  
FILE AMICUS BRIEF**

This matter comes before the Board on the motion of National Association of Olmstead  
Parks and Friends of Seattle’s Olmstead Parks (collectively, Olmstead) to file an *amicus*  
*curiae* brief.<sup>1</sup> The City of Olympia (City) filed an objection to the motion.<sup>2</sup> Intervenors filed no  
response.

Olmstead includes coalitions of parties interested in preserving the legacy of Frederick Law  
Olmstead Sr. and Olmstead Brothers Landscape Architects’ landscape design and  
implementation at the national (National Association of Olmstead Parks) and local (Friends

<sup>1</sup> Motion To Participate As Amicus, filed Dec. 21, 2009.

<sup>2</sup> Response To Petitioner’s Motion To Participate As Amicus, filed Dec. 31, 2009.

1 of Seattle's Olmstead Parks) levels.<sup>3</sup> Olmstead states that the Petition for Review  
2 challenges a City Ordinance which, among other things, increased the height limit for  
3 buildings in an area of the City. It is their position that the Ordinance violates the Growth  
4 Management Act as it will negatively affect historic design principles of the State Capitol  
5 Campus. Olmstead states they are familiar with the issues as the scope of the argument will  
6 involve the historic design of the Capitol Campus.<sup>4</sup>  
7

8 The City contends that the Olmstead motion fails to meet the requirements of WAC 242-  
9 02-530 and WAC 242-02-280. As to the requirements of WAC 242-02-280, the City states  
10 that the moving parties fail to explain why additional legal argument is necessary, that the  
11 Board's decision is to be based only on the record, and that the City would be prejudiced if  
12 the Board were to allow new evidence.<sup>5</sup>  
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14  
15 WAC 242-02-280 authorizes a person whose interests may be substantially affected by a  
16 proceeding before a board to seek *amicus* status:

17 (1) Any person whose interest may be substantially affected by a proceeding  
18 before a board may by motion request status as an amicus in the case.

19 (2) A motion to file an amicus curiae brief must include a statement of:  
20

21 (a) Applicant's interest and the person or group applicant represents;

22 (b) Applicant's familiarity with the issues involved in the matter and with the  
23 scope of the argument presented or to be presented by the parties;

24 (c) Specific issues to which the amicus curiae brief will be directed; and  
25

26 (d) Applicant's reason for believing that additional argument is necessary on  
27 these specific issues. The brief of amicus curiae may be filed with the motion  
28 but must be filed no later than the time set for the filing of the brief for the  
29 party whose position the amicus supports.  
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32 <sup>3</sup> Declaration of Iris Gestram and Brooks R. Kolb In Support of Motion.

<sup>4</sup> Motion To Participate As Amicus at 2.

<sup>5</sup> Response To Petitioner's Motion at 2.

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(3) If the person qualifies for amicus, the presiding officer may impose conditions upon the amicus's participation in the proceedings, either at the time that amicus status is granted or at any subsequent time.

Based on the requirement that the Board must base its decision solely on the record developed by the City during consideration and adoption of the Ordinance<sup>6</sup> and the lack of any justification presented by Olmstead regarding the need for additional legal argument<sup>7</sup> the motion for *amicus* status is denied.

DATED this 5th day of January, 2010.

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William Roehl, Presiding Officer

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<sup>6</sup> RCW 36.70A.290(4).  
<sup>7</sup> WAC 242-02-280(2)(d).  
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