

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 DANIEL J. EVANS, BOOTH GARDNER, ALBERT
4 D. ROSELLINI, RALPH MUNRO, NORMAN J.
5 JOHNSTON, THE PORTICO GROUP, MICHAEL S.
6 HAMM, OLYMPIA ISTHMUS PARK ASSOCIATION,
7 GERALD REILLY, FRIENDS OF THE
8 WATERFRONT and ROBERT V. JENSEN,

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Petitioners,

v.

CITY OF OLYMPIA,

Respondent,

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 FOR
RECONSIDERATION**

This matter comes before the Board on a motion for reconsideration¹ filed by National Association of Olmstead Parks and Friends of Seattle's Olmstead Parks (collectively, Olmstead) seeking reconsideration of the Board's order denying amicus status.² The City of Olympia (City) filed a response opposing the motion.³

A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832 (emphasis added):

¹ Motion To Reconsider Denial of Amicus Status filed January 11, 2010.

² Order Denying Motion To File Amicus Brief dated January 5, 2010.

³ Response To Petitioners' Motion To Reconsider filed January 15, 2009.

1 (1) After issuance of a **final decision** any party may file a motion for
2 reconsideration with a board in accordance with subsection (2) of this section.
3 Such motion must be filed within ten days of service of the final decision. The
4 original and four copies of the motion for reconsideration shall be filed with the
5 board. At the same time, copies shall be served on all parties of record. Within five
6 days of filing the motion for reconsideration, a party may file an answer to the
7 motion for reconsideration without direction or request from the board. A board
8 may require other parties to supply an answer. All answers to motions for
9 reconsideration shall be served on all parties of record.

10 (2) A motion for reconsideration shall be based on at least one of the following
11 grounds:

12 (a) Errors of procedure or misinterpretation of fact or law, material to the party
13 seeking reconsideration;

14 (b) Irregularity in the hearing before the board by which such party was
15 prevented from having a fair hearing; or

16 (c) Clerical mistakes in the final decision and order.

17 WAC 242-02-040(3) defines "Final decision" as follows:

18 (3) "Final decision" means:

19 (a) Any final order as provided in RCW 36.70A.300; or

20 (b) Any other written finding, determination or order of the board which finally
21 determines a legal right, duty, or other legal interest of the parties in the case and
22 which clearly states such written finding, determination or order that it is a final
23 decision subject to appeal to superior court.
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25 The Board's Order Denying Motion To File Amicus Brief was not a "final decision" as that
26 term is defined by WAC 242-02-040(3). Furthermore, even if it had been such an order,
27 Olmstead has mistakenly assumed the Board's decision was based on reasons other than a
28 determination that Olmstead failed to provide sufficient justification of the need for additional
29 argument.⁴ That is not the case.⁵
30

31 _____
32 ⁴ The Board's Order was not based on consideration of the City's suggestion that service was defective. Olmstead also suggested the Board committed an error of procedure in that it allegedly based its decision, in part, on Olmstead's failure to file a response to the City's objection. The Board's order refers only to the lack of

1 Having considered the arguments presented by Olmsted and the response from the City,
2 the Board finds no basis for reconsideration of its January 5, 2010 Order. Therefore,
3 Olmsted's Motion for Reconsideration is DENIED.

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5 DATED this 15th day of January, 2010.
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William Roehl, Presiding Officer

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29 response from the Intervenors, Triway Enterprises, LLC and Capital Shores Investments, LLC, not to
30 Olmsted. Under the Boards' rules no reply to the City's objection was allowed and would not have been
considered if filed. WAC 242-02-534.

31 ⁵ The Board further notes the Declaration of Gestram and Kolb filed with Olmsted's original Motion to
32 Participate as Amicus states that the Olmsted heritage advocates have closely monitored the controversy and
testified before the City of Olympia regarding this matter. Therefore, Olmsted's concerns should be
adequately reflected in the Record.

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