

COURT OF APPEALS
DIVISION II

COUNTY - I FILED 2:02

NO. 38577-5-II
STATE OF WASHINGTON
BY 

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Britt Dudek and Bruce Baguley,

Appellant

v.

The Eastern Washington Growth Management Hearings Board; Douglas
County; City of East Wenatchee; the Port of Chelan County; and the Port of
Douglas County,

Respondents

BRIEF OF RESPONDENT CITY OF EAST WENATCHEE

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Respondent

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A. Introduction

This court should affirm the decisions of the Eastern Washington Growth Management Hearings Board and the Thurston County Superior Court because Appellants fail to offer any substantive legal basis for reversing either of these decisions.

B. Assignments of Error.

Appellants' "assignments of error" violates RAP 10.3(g), which requires an individual assignment of error for each finding of fact to which Appellants assign error.

C. Statement of the Case.

Contrary RAP 10.3(a)(4), Appellants' argumentative Statement of the Case fails to provide "a fair statement of the facts and procedure relevant to the issues presented for review, *without argument.*"¹ Also contrary to RAP 10.3(a)(4), Appellants' Statement of the Case fails include a reference to the record for each factual statement.

¹ Emphasis Added.

D. Argument.

1. Standard of Review.

According to RCW 34.05.570(1), Appellants have the burden of demonstrating that the Eastern Washington Growth Management Hearings Board's ("Board") decision is invalid. According to RCW 34.05.570(3), a court shall grant relief only if it determines that:

- The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
- The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
- The agency has erroneously interpreted or applied the law;
- The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;
- The agency has not decided all issues requiring resolution by the agency;
- A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied;
- The order is inconsistent with a rule of the agency unless the

agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

- The order is arbitrary or capricious.

Here, Appellants have failed to meet their burden that even one of these criteria was violated.

2. This Court should affirm the decision of the Board because Appellants fail to show that Board's Findings of Fact are unsupported by substantial evidence and because Appellants fail to show that the Board's Conclusions of Law are unsupported by substantive law.

Respondent City of East Wenatchee ("City") requests that this Court adopt the reasoning set forth in the Respondent's Brief of Douglas County, the reasoning set forth in the Final Decision and Order of the Eastern Washington Growth Management Hearings Board,² and the reasoning set forth in the Letter Opinion of the Thurston County Superior Court.³

E. Fees and Costs

Pursuant to RAP 18.1, the City requests that this court grant the City the allowable fees and expenses enumerated in RAP 14.3.

The City also asks this Court to assess reasonable attorney's fees

² CP 13-51

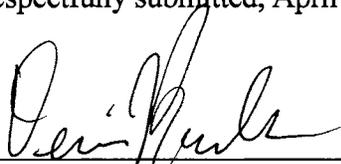
³ CP 151-154

against the Appellants under the authority of RCW 4.84.185. As to the City, Appellants' appeal is frivolous and advanced without reasonable cause.

F. Conclusion

The City respectfully requests that this Court affirm the decision of the Board because Appellants fail to show that Board's Findings of Fact are unsupported by substantial evidence and because Appellants fail to show that the Board's Conclusions of Law are unsupported by substantive law.

Respectfully submitted, April 29, 2009.



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Attorney for Respondent

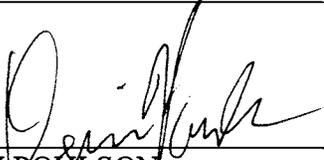
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CERTIFICATION OF SERVICE

I certify that, on Wednesday, April 29, 2009, I mailed a copy of the following documents to the individual(s) listed below via the U.S. Postal Service:

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