

84501-8

COURT OF APPEALS
DIVISION II

09 JUL 31 PM 2:53

STATE OF WASHINGTON
BY [Signature]
DEPUTY

PM 7-30-09

No. 38721-2-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

ADVOCATES FOR RESPONSIBLE DEVELOPMENT, et al, Appellant

and

WWGMHB et al, Respondents

SHAW FAMILY LLC REPLY BRIEF

Respondent's Brief

Stephen Whitehouse, WSBA #6818
Attorney at Law
P.O. Box 1273
Shelton, WA 98584
Telephone: 360-426-5885
Fax: 360-426-6429
Attorney for Shaw Family LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.	INTRODUCTION	1
II.	ISSUE	1
III.	DISCUSSION	1-4
VI.	CONCLUSION	4

TABLE OF AUTHORITIES

CASES

Akers v. Sinclair, 37 Wash.2d 693, 226 P.2d 225 (1951) 3

STATUTES

RCW 34.05.530 2, 4

RCW 36.70A.280 2, 3, 4.

RCW 36.93.160 2

RCW 90.14.190 2

OTHER AUTHORITIES

Friends v. King County, CPSGPHB Cause No. 94-3-0003 3

I. INTRODUCTION

This court has asked the Shaw Family LLC to provide briefing as to the issue of standing.

Advocates for Responsible Development (ARD) expressed an opinion in letter form as to the Mason County Commissioners actions on the Shaw Family Rezone (which is not a part of this appeal (see 38671-2-II)) and critical areas regulations amendments.

ARD and John Diehl appealed adverse determinations of the Mason County Commission to the Western Washington Growth Management Hearings Board (the "Board"). The Board determined Mr. Diehl did not have standing. This decision was affirmed by the Superior Court.

II. ISSUE

John Diehl did not have standing before the Western Washington Growth Management Hearings Board as he did not participate before the Mason County Commission.

III. DISCUSSION

On December 19, 2006, the Mason County Commission was to hear and consider the Shaw Family LLC rezone (see 38671-2-II) and various critical areas amendments.

A letter regarding these issues was faxed to a Mason County Planning staff member, Allan Borden, who was asked to present the letter

to the Mason County Commission. This letter was faxed on the day of the hearing. It was on letterhead for “Advocates for Responsible Development”, and begins, “In behalf of Advocates for Responsible Development, I am writing to comment on ...”.

Mr. Diehl’s apparent purpose was to cloak himself in the authority of an advocacy group. He now seeks to distance himself from his own actions.

Mr. Diehl’s issue is difficult to properly address with proper citation to the record as Mr. Diehl has failed to provide the record from the hearing before the Board, but only the record from the Superior Court as far as can be ascertained from the Corrected Clerk’s Papers.

The issue would appear to be very straightforward.

RCW 36.70A.280(2)(b), for purposes of appeal to the Board, gives standing to any person or entity,

“... who has participated orally or in writing before the county ... regarding the matter on which review is being requested ...”.

This statutory language has not been subject to judicial review. Standing is often determined by what the legislature decides it is (see for example RCW 90.14.190 and 36.93.160). RCW 34.05.530, from the Administrative Procedures Act, gives standing to anyone prejudiced by the agency action.

In this case, the legislature chose to provide standing to those people or entities that actively participated in the process.

When one acts in a representative capacity, as Mr. Diehl elected to do, one is not acting as an individual. It is proper to look at the body of an instrument to make that determination. Akers v. Sinclair, 37 Wash.2d 693, 226 P.2d 225 (1951).

Diehl argues that Friends v. King County, CPSGPHB Cause No. 94-3-0003, supports its position.

In that case Ms. Klacsan appeared before the King County Counsel and signed in as representing the Snoqualmie River Alliance. She actively testified at the hearing. She was also a member of Friends of the Law (FOTL) and did not sign in or identify herself as representing that organization. The sole issue presented to the Board in that case was whether her presence constituted an appearance for FOTL under the version of RCW 36.70A.280, then in effect.

The Board held it was not an appearance and therefore FOTL did not have standing. The issue of whether Ms. Klacsan had standing was not an issue in the case and was, therefore, presumably, not briefed. The record (from the King County Council is not discussed and she well could have addressed herself to them as an individual since she did appear and testify before them.

What is clear from this case is that any comment about her individual standing was gratuitous and dicta. In addition, the decision of the Board also makes it clear one who identifies him or herself in a certain capacity in an appearance will be bound by that representation.

It would seem that since the standing under RCW 36.70A.280 is significantly broader than the standing under the APA, RCW 34.05.530, this court should not broaden that standing even further to include any conceivable rationale that might be asserted.

IV. CONCLUSION

Mr. Diehl never participated in this matter but sought to enhance his involvement by acting as the spokesman for ARD, with its attendant rights and responsibilities. He should not be permitted a mulligan because his actions now work to his unanticipated disadvantage.

DATED this 30 day of Jy, 2009.



STEPHEN WHITEHOUSE, WSBA #6818
Attorney for SHAW FAMILY LLC

I declare:

On the 30th day of July, 2009, I mailed a true and correct copy of Appellant's Reply

Brief, in a properly stamped envelope by regular mail addressed as follows:

Advocates for Responsible Development
678 E. Portage Road
Shelton, WA 98584

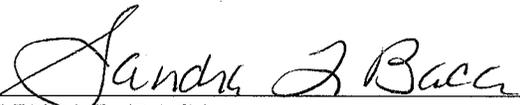
Monty Cobb
Deputy Prosecuting Attorney
Mason County Prosecutors Office
P.O. Box 639
Shelton, WA 98584

Martha Lantz
Assistant Attorney General
Attorney Generals Office
P.O. Box 40110
Olympia, WA 98504-0100

COURT OF APPEALS
DIVISION II
09 JUL 31 PM 2:54
STATE OF WASHINGTON
BY _____
DEPUTY

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Shelton, Washington on July 30, 2009.



SANDRA L. BACA