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NO. 85989-2
Court of Appeals No. 39546-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
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STERLING SAVINGS BANK, CLARK COUNTY, &
THE CITY OF LA CENTER, *ET AL.*

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

Petitioners,

v.

WESTERN WASHINGTON GROWN MANAGEMENT HEARINGS
BOARD, AN AGENCY OF THE STATE OF WASHINGTON, *ET AL.*,

Respondents.

AMICUS CURIAE BRIEF OF CITY OF CAMAS IN SUPPORT OF
PETITION FOR DISCRETIONARY REVIEW

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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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I. IDENTITY

This Amicus Curiae Brief is submitted by the City of Camas.

II COURT OF APPEALS DECISION

The Court of Appeals decision at issue is *Clark County v. Western Growth Management Hearings Board*, 161 Wn. App. 204 (2011).

III. ISSUES

1. Is a City a necessary party to proceedings before a Growth Management Hearings Board challenging the City's Urban Growth Boundary?
2. Can the annexation of a City be collaterally invalidated by a decision of the Growth Management Hearings Board?
3. Did Clark County lose jurisdiction over the land in the expanded UGA of Camas when it was annexed by Camas?
4. Did the Court of Appeals misinterpret RCW 36.70A.302(2)?

IV. STATEMENT OF THE CASE

On September 25, 2007, Clark County adopted Ordinance No. 2007-09-13 which in part added additional land to the urban growth area of Camas. Thereafter, property owners in the City's expanded urban growth area initiated proceedings under the direct petition method (RCW 35A.14.120 et. seq.) to annex their respective properties to Camas. Camas advertised and conducted separate public hearings, first to determine whether the property owners should be permitted to circulate a petition, and secondly to consider whether

the petition to annex should be granted. No objections to the annexation were made by Karpinski, Futurewise, or Clark County National Resources, the Appellants herein. On April 21, 2008, the City Council adopted Ordinances 2510 - 2514 granting the petitions to annex. At no time in the annexation process did Karpinski, Futurewise, or CCNRC voice any objection to the annexation, submit any materials in opposition to the annexation, attempt to enjoin the City from annexing the properties, or seek to have the annexations judicially reviewed.

While the City was conducting its annexation proceedings, Karpinski, Futurewise, and CCNRC petitioned the Growth Management Hearings Board for review of Clark County's 2007 decision de-designating certain properties from agricultural lands of long term significance (ALLTCS), and adding those properties to the urban growth areas of several cities, including Camas. The City of Camas was not named as a party in the Growth Management Hearings Board Appeal, was given no notice that its Urban Growth Boundary was being challenged, and was afforded no opportunity to be heard in those proceedings. The Growth Management Hearings Board entered its final order on May 14, 2008, three days after the City's annexations became effective.

Subsequent to the annexations, the City invested considerable time and money in planning for the annexed areas, has collected taxes from the annexed areas, and has provided municipal services to the annexed areas.

There was no suggestion from any source that the validity of the annexations was being challenged or questioned until receipt of the Court of Appeals' Order of June 1, 2010, where the Court raised the issue *sua sponte*.

V. ARGUMENT

A. Necessary Party: A necessary party is one who has sufficient interest in the litigation that judgment cannot be entered without affecting the interest of that party. An indispensable party is one without whose presence and participation a complete determination of the case may not be made. *Metro Mortgage and Securities Co. v. Cochran*, 138 Wn. App. 267 (2007); CR 19. Persons are not necessary parties where no recovery is sought against them and they would not be prejudiced by the judgment. *Lindberg v. Kitsap County*, 133 Wn.2d 729 (1997).

The City of Camas is a necessary and indispensable party to any proceeding challenging its urban growth boundary or seeking to invalidate one of its annexations. In this case, both the urban growth boundary and the corporate boundary of Camas are at issue. The urban growth boundary defines the City's urban growth area, which is a geographic area designed to accommodate the City's projected urban growth for the succeeding 20 years. RCW 36.70A.100. Cities are required to plan for urban growth and to include sufficient area to accommodate both residential and non-residential uses.

RCW 36.70A.100. A city's corporate boundaries define its territorial jurisdiction, the geographical area where it may exercise its municipal powers.

Clearly, the City has an interest in any proceeding that seeks to alter either its urban growth boundary or its corporate limits. While a challenge to Clark County's de-designation of ALLTCS may not at first blush seem to implicate Camas, when the purpose or effect of that challenge is to alter the City's urban growth boundary and to invalidate its annexation, then the City's interests are being affected, and it should be joined as a party. Since the City of Camas has a direct interest in the proceedings, an inquiry should have been made whether a complete determination of the controversy could be made without the City. If the answer was no, then the City should have been joined. Alternatively, if the City is not necessary to a complete determination, then it need not be joined so long as no recovery is sought against it and it would not be prejudiced by the decision. *Lindberg v. Kitsap County*, supra at 745. Here, no such inquiry was apparently made. The city was not named as a party, yet it is clearly prejudiced by the decision of the Court of Appeals.

B. Jurisdiction: The Growth Management Hearing Board had no jurisdiction over the City of Camas, nor over the City's annexation. Complete jurisdiction requires subject matter jurisdiction, jurisdiction over the parties, and the power to render the particular judgment. *State v. Golden*, 112 Wn. App. 68 (2002). Subject matter jurisdiction refers to the tribunal's authority to

hear and determine a particular type of controversy. *State v. Barnes*, 146 Wn. 2d 74 (2002); *Marley v. Department of Labor and Industries*, 125 Wn. 2d 533 (1994). The jurisdiction of the Growth Management Hearings Board is limited by RCW 36.70A.280 to petitions alleging that adopted comprehensive plans or development regulations or amendments thereto are not in compliance with the Growth Management Act. Since annexation is neither a comprehensive plan nor a development regulation, the Growth Management Hearings Board has no subject matter jurisdiction to rule on the validity of Camas's annexation. *See Wenatchee Sportsmen v. Chelan County*, 141 Wn.2d 169 (2000). The proper process for challenging annexations is to either seek judicial review under RCW 35A.14.210, or a writ of review under RCW 7.16.040 et. seq.

Clearly, the review of annexations is not the type of controversy within the purview of the Growth Management Hearings Board. What it cannot accomplish by a direct conferral of jurisdiction it ought not be able to do collaterally, particularly when the tribunal also lacks personal jurisdiction over the city conducting the annexation. Had Karpinski, Futurewise, or CCNRC had a disagreement with the City's annexation, they had an ample opportunity to seek Court review under RCW 35A.14.210 or RCW 7.16.040.

C. Mootness: In *Panesko v. Lewis County*, 2009 WL2981888 (2009) (Western Washington Growth Management Hearings Board), the Growth

Management Hearings Board entered a Final Determination and Order that the inclusion of rural lands in the Urban Growth Area of Toledo failed to comply with the Growth Management Act requirement to designate and conserve ALLTCS. Toledo, which was a party to the Growth Management Hearings Board litigation, initiated proceedings to annex the land in question. The annexation thereafter became effective when no request was made to invoke the jurisdiction of the Boundary Review Board. In a subsequent Compliance Hearing before the Growth Management Hearings Board, the Board held "the issue of whether the property should be included as part of the UGA is moot", and "Toledo having annexed the property, the land is no longer subject to the county's jurisdiction." *Panesko, supra at page 5.*

Here the fact pattern is almost identical, except that Camas was not a party to the Growth Management Hearings Board proceedings, and its annexation was effective before the entry of the Board's Final Determination and Order. In both instances there was no challenge to the annexation.

D. Statutory Interpretation: RCW 36.70 A.302(2) provides in part:

A determination of invalidity is prospective in effect, and does not extinguish rights that vested under state or local law before receipt of the Board's Order by the city or county.

The interpretation by the Court of Appeals ignores the plain meaning of the statute, and fails to give effect to the clearly expressed legislative intent. If a determination of invalidity is to be applied to retroactively to invalidate a

properly conducted annexation, it should be because the legislature has concluded that that is good public policy, and not because it was necessary in order for the Court of Appeals to justify its decision to reverse Clark County's action de-designating ALLTCS.

VI CONCLUSION

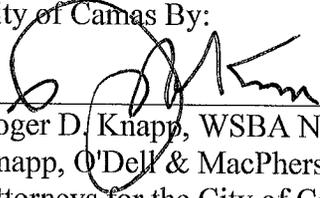
Under RAP 13.4(B)(4) acceptance of review is appropriate if the case involves issues of substantial public interest that should be decided by the Supreme Court. Whether a city is a necessary party to proceedings seeking to alter its urban growth area, whether a Growth Management Hearings Board can collaterally annul a city's annexation, whether a county loses planning jurisdiction over land annexed by a city, and whether a construction of RCW 36.70A.302(2) that essentially renders it meaningless are all issues of public interest that should be addressed by the Supreme Court.

Washington's 206 incorporated cities and towns are left with uncertainty and a lack of guidance by the Court of Appeals' decision. The role of the Courts is to resolve disputes, not foster litigation. The Court of Appeals decision, while purportedly limited to the Growth Board's authority to enter findings regarding the validity of the County's actions (*Clark County v. Hearings Board*, supra at 226), casts uncertainty on the status of the City's annexations. At the very least, litigation will be needed to determine whether the Court of Appeals decision annuls the annexations by Camas. In the

meantime, Camas and the affected property owners are left in limbo about whether to plan for the affected area, to install infrastructure, and to proceed with development.

RESPECTFULLY SUBMITTED this 6th day of July, 2011

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CERTIFICATE OF SERVICE

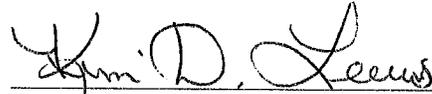
The undersigned hereby certifies a true and complete copy of the foregoing AMICUS CURIAE BRIEF OF CITY OF CAMAS IN SUPPORT OF PETITION FOR DISCRETIONARY REVIEW was caused to be served by email and first class U.S. Mail on July 7, 2011, on counsel of record at the addresses shown below:

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

Executed at Camas, Washington, this 7th day of July, 2011.



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