

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON
PIERCE COUNTY

CITIZENS FOR ACCOUNTABLE
GOVERNMENT IN EGLON AND
HANSVILLE,

Plaintiff,

v.

KITSAP COUNTY; JUDITH FORITANO;
SID KNUTSON; NANCY RUMMEL;
DEBBIE MADDEN; CINDY McDERMOTT;
GERRY PORTER; LOU FORITANO; REX
GALLAHER; JERRY ULSUND; KINLEY
DELLER; TIM HOLBROOK; LINDA
REDLING; NANCY GARING; TREVOR
EVANS; LYNN HIX; SANDI WRIGHT;
ALLEN OTTO; PAT FREDRICKS; KEN
SHAWCROFT; EMMA JEAN
HEMINGWAY; FRED NELSON; MAX
POLIN, ROBIN POLIN; HEIDI KASTER;
TOM RITLEY; PATRICIA PINKHAM;
GARY PAULSON; TONY ATKINSON;
JUDY ROUPE; BARBARA McGILL;
BECKY ELLISON; CAROLEE FLATEN;
WAYNE STILES; PAT MILLER; RAY
ROHAY; MIKE CONNOLLY; JEAN
CONNOLLY; JIM LAUGHLIN; McKINZIE
McDERMOTT; MIKE BRINTON; and
KELLY HAGOOD,

Defendants.

NO. 08-2-13027-0

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 Plaintiff, by and through its attorneys HELLER WIEGENSTEIN PLLC and
2 GERALD A. KEARNEY, allege as follows:

3 **I. PARTIES**

4 1.1 Plaintiff Citizens for Accountable Government in Eglon and Hansville is a
5 Washington non-profit corporation, whose officers, directors, and members own property
6 and/or reside in the north end of Kitsap County, Washington in the general area of the
7 communities of Hansville, Eglon, and Cliffside.

8 1.2 Defendant Kitsap County is a political subdivision of the State of
9 Washington.

10 1.3 Defendants JUDITH FORITANO; SID KNUTSON; NANCY RUMMEL;
11 DEBBIE MADDEN; CINDY McDERMOTT; GERRY PORTER; LOU FORITANO;
12 REX GALLAHER; JERRY ULSUND; KINLEY DELLER; TIM HOLBROOK; LINDA
13 REDLING; NANCY GARING; TREVOR EVANS; LYNN HIX; SANDI WRIGHT;
14 ALLEN OTTO; PAT FREDRICKS; KEN SHAWCROFT; EMMA JEAN
15 HEMINGWAY; FRED NELSON; MAX POLIN, ROBIN POLIN; HEIDI KASTER;
16 TOM RITLEY; PATRICIA PINKHAM; GARY PAULSON; TONY ATKINSON;
17 JUDY ROUPE; BARBARA McGILL; BECKY ELLISON; CAROLEE FLATEN;
18 WAYNE STILES; PAT MILLER; RAY ROHAY; MIKE CONNOLLY; JEAN
19 CONNOLLY; JIM LAUGHLIN; McKINZIE McDERMOTT; MIKE BRINTON; and
20 KELLY HAGOOD (collectively the “GHAAC Defendants”) are individuals who own
21 property and/or reside in Kitsap County, Washington, and purport to be members of a
22 group calling itself “Greater Hansville Area Advisory Council”, hereinafter referred to as
23 “GHAAC.”

24 **II. JURISDICTION AND VENUE**

25 2.1 This court has jurisdiction over the parties to this lawsuit, as the GHAAC

1 Defendants are all residents of Kitsap County, and the conduct of the GHAAC
2 Defendants which gives rise to this action occurred in Kitsap County.

3 2.2 The court has subject matter jurisdiction of this action.

4 2.3 Venue is proper in Pierce County pursuant to RCW 36.01.050.

5 III. FACTS

6 3.1 In 2003, a group of Hansville area residents formed a group known as
7 “Hansville Futures” or the “Futures Group”, with the stated goal of surveying the
8 residents and property owners in the Hansville area, and determining what sort of “future
9 Hansville” those persons wanted to see in the years ahead. The Futures Group, led by
10 Steve Bauer, prepared a survey form and – according to the Futures Group – mailed it to
11 about 2600 Hansville area property owners. The survey asked a number of questions
12 relating to living and working in the Hansville area.

13 3.2 Eventually, according to the Futures Group, about 375 surveys were returned
14 – i.e., about a 15% return rate. More than 2200 of the survey forms, or approximately
15 85%, were ignored and/or otherwise were not returned.

16 3.3 The Futures Group reviewed the responses to the survey questions, and from
17 that process determined a list of goals and actions that the citizens of Hansville
18 supposedly supported. The Futures Group later denominated these as the “mandated
19 goals” of the Hansville area, based on the Futures Group’s own subjective determination
20 of what the various survey responses meant. In reality, the “mandated goals” were and
21 are simply the personal, private political goals and objectives of the persons comprising
22 the Futures Group.

23 3.4 In 2006-2007, with Steve Bauer taking the primary role, the Futures Group
24 approached Kitsap County and pressed the County to accord the Futures Group a formal
25 status, legally and functionally, within the County. The Futures Group’s goal in so doing
26

1 was to obtain County resources to carry out the Futures Group’s private political goals,
2 and to have those private political goals endorsed and given the imprimatur of official
3 County policy.

4 3.5 The County, after multiple communications and planning with the Futures
5 Group, acceded to the request, and in June 2007 the Board of County Commissioners
6 passed resolution 125-2007, which formally recognized the Greater Hansville Area
7 Advisory Council (“GHAAC”) as the primary political voice of the Hansville area, to the
8 practical exclusion of other individuals and organizations, and as an official component
9 of County government. The resolution did not limit GHAAC’s role to a specific topic,
10 governmental issue, or problem; instead, the GHAAC was granted general jurisdiction
11 and power over all issues and events that the GHAAC, in its own determination, decided
12 were of interest to the GHAAC.

13 3.6 The initial GHAAC membership was comprised of the Futures Group
14 members – in effect, the same group of people with a new name and new powers.
15 County policy, as expressed in resolution 125-2007 and in other GHAAC documents,
16 appointed the GHAAC as the funnel or conduit through which all political dialogue
17 between the County and Hansville area citizens would take place, with the GHAAC
18 filtering and controlling public dialogue and input, and then purporting to communicate
19 with the County and third-parties on behalf of all Hansville’s citizens.

20 3.7 Subsequent conduct by the County (Steve Bauer, by then serving as an
21 appointed Commissioner) reiterated that the County would not consider citizen dialogue
22 and input on issues and matters within the GHAAC’s claimed purview unless that
23 dialogue and input were conducted through the GHAAC.

24 3.8 In practice, defendant County has treated the GHAAC as a special political
25 voice, and given such great deference that the County has acted as a rubber stamp, taking
26

1 action requested and recommended by GHAAC without any independent determination
2 of the propriety of that action, and effectively delegating legislative powers to the
3 GHAAC.

4 3.9 The County's resolution 125-2007 was based upon, and incorporated, a set of
5 Bylaws drafted for the GHAAC, which set forth the geographical boundaries of the area
6 which GHAAC sought to control (hereinafter "the Disenfranchised Areas") and which
7 specified the means and methods by which GHAAC would function.

8 3.10 The Bylaws provided, *inter alia*, specific procedures for how
9 neighborhood representatives to GHAAC were to be appointed, how amendments to the
10 Bylaws were to be made, how GHAAC was supposed to elicit and consider opinion and
11 input from the broad community of people within the Disenfranchised Areas, etc.

12 3.11 Contrary to the Bylaws, the neighborhood representatives were not
13 appointed by their respective neighborhoods.

14 3.12 Contrary to the Bylaws, the GHAAC purported to revise the Bylaws so as
15 to create one or more new neighborhoods, without the requisite notice of the proposed
16 changes, and without even making an attempt to determine whether the newly former
17 neighborhood wished to be represented in that fashion.

18 3.13 Contrary to the Bylaws, the GHAAC has repeatedly, consistently, and
19 intentionally failed to consider input and opinions from non-members who live and/or
20 own property within the Disenfranchised Areas.

21 3.14 Contrary to the Bylaws, the GHAAC has allowed at least one purported
22 member, defendant Sid Knutson, to resign his position, and then conspired with Knutson
23 to prevent the neighborhood in question from appointing its own chosen replacement
24 member, as required by the Bylaws. The GHAAC took this action after another resident
25 of that neighborhood specifically inquired about seeking the empty position, and about
26

1 what process was needed to secure the necessary neighborhood support and approval.
2 Instead, the GHAAC allowed and assisted Knutson in unilaterally re-claiming the
3 representative position, with no notice to, input from, debate within, or expression of
4 preference by the residents and property owners of the neighborhood in question.

5 3.15 The “neighborhoods” specified by the Bylaws were drawn by the County
6 and/or GHAAC to give certain small groups of people undue voting power within
7 GHAAC, and to minimize the voting and political rights of large groups of people living
8 in the disfavored neighborhoods. This representational scheme violated the “one person,
9 one vote” principal basic to our system of government.

10 3.16 In addition to the neighborhood representatives specified in the Bylaws,
11 “groups” are also entitled to be members of the GHAAC, and to appoint a representative.
12 The County delegated to these groups the decision as to who would be appointed as
13 representative, just as it delegated to neighborhoods the decision as to who would be
14 appointed as a representative. The groups are in many cases merely informal
15 congregations of people who claim to share a common interest, and have no separate
16 legal or political existence, yet the County granted them the same voting powers as real
17 persons. In many cases, the same person claiming to be a neighborhood representative to
18 GHAAC is also claimed to be a group representative, thereby allowing that person two
19 votes on each issue that GHAAC votes upon. This representational scheme also violated
20 the “one person, one vote” principal basic to our system of government.

21 3.17 The GHAAC has conducted public meetings on a more or less monthly
22 basis, at which public input is severely circumscribed, and in which members of the
23 public are not allowed to participate when the GHAAC members consider issues to be
24 voted upon.

25 3.18 The County and GHAAC have both admitted that the GHAAC is subject
26

1 to Washington's Open Public Meetings Act, RCW 42.30, yet the GHAAC has repeatedly
2 violated the Act by conferring and making decisions, and otherwise taking "action" as
3 defined by the Act, in a manner which violates the Act. Further, on information and
4 belief, the Executive Committee of the GHAAC has conducted meetings and decisions
5 that were closed to the public and took place without notice to the public.

6 **IV. FIRST CAUSE OF ACTION: ULTRA VIRES**

7 4.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and
8 Injunctive Relief are incorporated herein by reference.

9 4.2 Defendant Kitsap County had no legal authority to constitute an advisory
10 body of the GHAAC's scope and powers. All acts taken, or purported to have been
11 taken, by GHAAC, the GHAAC Defendants, and defendant County in the enactment of
12 resolution 125-2007, and pursuant to said resolution, are void.

13 4.3 Plaintiff is entitled to declaratory and injunctive relief.

14 **V. SECOND CAUSE OF ACTION: UNCONSTITUTIONAL DELEGATION**
15 **OF POWER**

16 5.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and
17 Injunctive Relief are incorporated herein by reference.

18 5.2 Defendant Kitsap County's delegation to GHAAC of the powers to determine
19 who the GHAAC members and representatives would be, and to amend the Bylaws,
20 constituted an unlawful and unconstitutional delegation of legislative power to a private
21 group, under the United State Constitution and Washington State constitution.

22 5.3 Plaintiff is entitled to declaratory and injunctive relief.

23 **VI. THIRD CAUSE OF ACTION: EQUAL PROTECTION**

24 6.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and
25 Injunctive Relief are incorporated herein by reference.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

6.2 Defendant Kitsap County's creation of GHAAC with a structure that apportioned voting rights on gerrymandered "neighborhoods" of grossly disproportionate size, and to "groups" of people which have no independent legal existence and no right to vote, violates the "one person, one vote" requirement of the Equal Protection clause of the United States Constitution, 14th Amendment.

6.3 Plaintiff is entitled to declaratory and injunctive relief.

VII. FOURTH CAUSE OF ACTION: FREE SPEECH / RIGHT TO PETITION

7.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and Injunctive Relief are incorporated herein by reference.

7.2 Defendant Kitsap County's creation of GHAAC, and the County's and GHAAC's subsequent conduct, have resulted in the citizens of the Disenfranchised Areas being denied the direct citizen communication with their duly-elected, legally constituted government: Kitsap County. Instead, Hansville's citizens are required to communicate through, and have their viewpoints filtered by, the GHAAC before the County will consider them, in violation of the rights of free speech, and to petition government for redress, guaranteed under the United States Constitution, 1st Amendment.

7.3 Plaintiff is entitled to declaratory and injunctive relief.

**VIII. FIFTH CAUSE OF ACTION: FAILURE TO ENSURE COMPLIANCE
WITH BYLAWS**

8.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and Injunctive Relief are incorporated herein by reference.

8.2 Defendant County, in passing resolution 125-2007, and in recognizing GHAAC as an arm of the County, undertook a duty to ensure that the GHAAC actually followed the Bylaws. Defendant County failed to do so, allowing the GHAAC to operate in continuous and ongoing violation of the Bylaws.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8.3 Plaintiff is entitled to declaratory and injunctive relief.

IX. SIXTH CAUSE OF ACTION: FAILURE TO COMPLY WITH BYLAWS

9.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and Injunctive Relief are incorporated herein by reference.

9.2 The GHAAC has a legal duty to comply with its own Bylaws, and has failed to do so. Specifically, the Bylaws have been violated with respect to (a) how neighborhood representatives and group representatives were appointed, (b) creation of new neighborhoods and amendment of Bylaws, and (c) considering input and opinion from citizens of the Disenfranchised Areas.

9.3 Plaintiff is entitled to declaratory and injunctive relief.

X. SEVENTH CAUSE OF ACTION: OPEN PUBLIC MEETINGS ACT

10.1 The preceding paragraphs of plaintiffs' Complaint for Declaratory and Injunctive Relief are incorporated herein by reference.

10.2 The GHAAC has violated Washington's Open Public Meetings Act, RCW 42.30.

10.3 Plaintiff is entitled to declaratory and injunctive relief.

PRAYER FOR RELIEF

Wherefore, plaintiff requests that the court grant the following relief:

A. Enter declaratory judgment in plaintiffs' favor and against defendants, as follows:

- 1. That Kitsap County has no power or legal authority to create the GHAAC, and that the GHAAC is void and of no legal status or effect;
- 2. That Kitsap County Resolution No. 125-2007 is null and void.
- 2. That even if Kitsap County had the power and legal authority to create an advisory body like the GHAAC, the County's delegation of the means

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

of selecting representatives, and of which groups would have representatives, and of the power to amend Bylaws, and of the unlimited scope and reach of the GHAAC, were and are unconstitutional delegations of legislative power;

3. That the GHAAC’s neighborhood map and designations, and the fact that groups are allowed to vote as members of GHAAC independent of any legal status or underlying voting rights, constitute denial of equal protection of the laws to citizens of the Disenfranchised Areas.

4. That the County's failure to provide for the election of GHAAC representatives has violated and continues to violate the Washington State Constitution. [Art. XI, Sec. 5]

5. That the County’s decision and practice of making GHAAC the primary conduit through which citizens of the Disenfranchised Areas must communicate with the County, and in granting the GHAAC such status as to all third parties to whom GHAAC might communicate, violate the citizens of the Disenfranchised Areas’ rights of free speech and to petition government for redress.

6. That the County has failed to ensure that GHAAC has complied with its own Bylaws;

7. That the GHAAC has failed to comply with its own Bylaws with respect to appointment of its members, and that accordingly the GHAAC has never been a properly constituted body under its own Bylaws, and that accordingly all decisions and actions taken by GHAAC from the outset are void and of not force or effect;

8. That the current GHAAC membership, not being properly constituted under its own Bylaws, lacks the power to amend Bylaws or otherwise

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

take any action as the GHAAC;

9. That the GHAAC’s creation of one or more new neighborhoods, even if the GHAAC membership had been properly constituted, is void and of no force or effect because those acts were done in violation of the Bylaws;

10. That the GHAAC has failed to comply with its own Bylaws with respect to eliciting and considering broad community input before taking action or making decisions, and that accordingly all decisions and actions taken by GHAAC from the outset are void and of not force or effect.

11. That the GHAAC has violated Washington’s Open Public Meetings Act, RCW 42.30.

B. That the court order injunctive relief in favor of plaintiff and against defendants, as follows:

1. Ordering that defendant County cease providing GHAAC with County resources and funds that are not likewise made available to all citizens with the Disenfranchised Areas;

2. Ordering that the County cease representing that GHAAC is officially recognized by the County;

3. Ordering that the GHAAC Defendants cease operating as the GHAAC and cease representing to third parties that the GHAAC exists and/or has any special status with Kitsap County or the Disenfranchised Areas.

C. Award plaintiff its taxable costs and statutory attorney fees; and

D. Order such other and further relief as the court deems just and equitable.

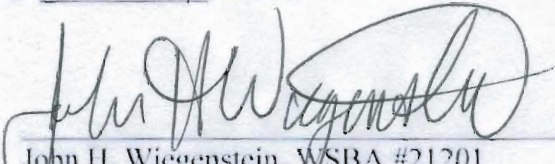
/


/

/

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 1st day of October, 2008.


John H. Wiegstein, WSBA #21201
HELLER WIEGENSTEIN PLLC
Attorneys for Citizens for Accountable
Government in Eglon and Hansville


Gerald A. Kearney, WSBA #21819
LAW OFFICE OF GERALD A. KEARNEY
Attorneys for Citizens for Accountable
Government in Eglon and Hansville