

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

JOHN E. DIEHL, KERRY HOLM, GORDON)
JACOBSON, and VERN RUTTER, individually,) No. 95-2-0073
and as members of the MASON COUNTY)
COMMUNITY DEVELOPMENT COUNCIL)
(MCCDC), a non-profit association,)
ORDER DENYING)
Petitioners,) MOTION FOR)
) RECONSIDERATION)
) (AGRICULTURAL)
) RESOURCE LANDS)
)
v.)
MASON COUNTY,)
Respondent,)
and)
)
PETER OVERTON, DONALD B. PAYNE,)
McDONALD LAND COMPANY, HUNTER)
CHRISTMAS TREES, HUNTER FARMS,)
SKOOKUM LUMBER COMPANY,)
MANKE LUMBER COMPANY and)
MASON COUNTY PRIVATE)
PROPERTY ALLIANCE (MCPA),)
)
Intervenors.)
_____)

This order is in response to Petitioner Diehl’s August, 1999 motion for reconsideration of our decision regarding: (1) qualified lands not in current use; (2) smaller agricultural parcels; (3) clustering densities; and (4) residential setbacks; the County’s subsequent response to his motion, and Petitioner Diehl’s reply to the County’s response.

Petitioner Diehl maintained that we had made current use a de facto requirement for agricultural designation. Diehl asserted that this was contrary to the Supreme Court's ruling in *City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 959 p.2 1091 (1998).

Contrary to Mr. Diehl's assertion, we did not conclude that current or recent agricultural use and landowner intent can be a requirement for agricultural designation in compliance with the Growth Management Act (GMA, Act). In our order, we said that we could not determine from this record whether the inclusion of acreage "surrounded" by agricultural resource lands (ARLs) and designation of lands in production in 1991 which were no longer in production, satisfied the requirement that qualified lands not in current use be included in ARL designation. The answer to this question, we said, must await the County's response to our order. Specifically, we await the County's definition of "surrounded" and its explanation of its separation of "woodlands, housing lots, ponds, pasture and rangeland" into designated ARLs and undesignated lands. We decline to reconsider our order regarding this segment of Petitioner Diehl's motion.

Reconsideration Question (2), Smaller Agricultural Parcels

Petitioner Diehl maintained that we had erred in concluding that designation criteria that excluded smaller parcels which would have otherwise been designated, complied with the Act. We did not so conclude.

The question was whether qualified lands were improperly disqualified. We ruled that we could not determine whether or not that occurred until the County removes the ambiguity of its language regarding the definition of "surrounding" and clarifies on what basis the "woodlands, housing lots, ponds, pasture and rangeland" category was divided into designated and non-designated lands. We decline to reconsider our ARL order regarding this segment of Petitioner Diehl's motion.

Reconsideration Question (3), Clustering Densities

Petitioner Diehl asserted that we concluded that a minimum parcel size of 10 acres and allowance of three residences on 12 acres complied with the Act.

We concluded that the minimum parcel size of 10 acres and "the associated possibility of a 1 to 5

density in some ARLs which are clustered” was in compliance. We held that Mason County’s actions were clearly within the latitude afforded by RCW 36.70A.090 and .177 regarding the use of innovative techniques in agricultural lands. Petitioner Diehl has failed to persuade us that we erred in this conclusion. We decline to reconsider this segment of Petitioner’s motion.

Reconsideration Question (4), Residential Setbacks

Petitioner Diehl maintained that we had concluded that residential setbacks of 50 or 100 feet, as the only measures to discourage incompatible uses within a 500-foot distance specified in RCW 36.70A.060, complied with the Act. We did not so conclude.

We did not refer to the setbacks as “the only measures to discourage incompatible uses”. We did say that the County was within its range of discretion in adopting the buffers in response to our December 1998 remand, in which we had stated that 5 to 20-foot buffers were inadequate. We also concluded that Petitioner Diehl had failed to meet his burden of demonstrating that the County was clearly erroneous in selecting the 50 to 100-foot buffer widths from the range of options before it. We decline to reconsider our order regarding this segment of Petitioner’s motion.

The motion to reconsider is denied.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

So ORDERED this 9th day of December, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen

Board Member

William H. Nielsen

Board Member