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

WARREN DAWES, JOHN E. DIEHL, GORDON)
JACOBSON, JUTTA RIEDIGER, VERN RUTTER, and) No. 96-2-0023c
KERRY HOLM, individually and as members of the)
MASON COUNTY COMMUNITY DEVELOPMENT) ORDER DENYING
COUNCIL (MCCDC), a non-profit association,) THE MOTION FOR
) CONSOLIDATION
) OF CASES AND
Petitioners,) GRANTING THE
) MOTION FOR
v.) SETTING A
) COMMON ACTION
MASON COUNTY,) DATE FOR COUNTY
) COMPLIANCE
Respondent,)
)
and)
)
PETER E. OVERTON, et al., McDONALD LAND)
COMPANY, HUNTER CHRISTMAS TREES, HUNTER)
FARMS, SOUTH 101 CORRIDOR GROUP, Inc.,)
and MANKE LUMBER COMPANY,)
)
Intervenors.)
_____)
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) ORDER DENYING
(MCCDC),) THE MOTION FOR
) CONSOLIDATION
Petitioners,) OF CASES AND
) GRANTING THE
) MOTION FOR
MASON COUNTY,) SETTING A
) COMMON ACTION
Respondent,) DATE FOR COUNTY
) COMPLIANCE
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 (MCPPA),)
)
Intervenors.)
_____)

INTRODUCTION

On August 6, 2001, we received a motion from Mason County to consolidate Case #96-2-0023c (“Dawes”) and Case #95-2-0073 (“Diehl”). On August 8, 2001, we received a response to the motion from Petitioner John Diehl. On August 14, 2001, we received a response to the motion from Petitioners MCCDC, Janet Dawes, Gordon Jacobson, Vern Rutter and Kerry Holm. On August 16, 2001, we received a response to the motion from South 101 Corridor Group Incorporated and Hunter Tree Farms. On August 21, 2001, we received a letter from Washington State Office of Community Development stating its position.

CONTENTIONS

The County requested that the cases be consolidated “and/or that a common action date for County compliance be set for December 11, 2001.” Bob Fink memo, July 30, 2001. The County noted that this rescheduling would postpone action on the County comprehensive plan (CP), and on habitat conservation areas. It further observed that rescheduling the common action date would accelerate action on frequently flooded areas and geologically hazardous areas. It claimed that many of these issues are tied together, so a comprehensive response would be most productive. It noted that several businesses had informed the County that they cannot operate in the current climate and intend to locate operations elsewhere. This, the County averred, has strongly motivated the County to bring the process to its culmination. Intervenors South 101 Corridor Group and Hunter Tree Farms supported the County’s request and noted that this is the first time a comprehensive strategy with enough technical and financial support is being implemented. The Office of Community Development (OCD) stated its support of consolidation if “it will allow Mason County to more effectively resolve the issues.”

Petitioner Diehl observed that after six years and 15 compliance hearings in one case and five years and several compliance hearings in another, it is late in the day to be asking for consolidation. He, too, underscored the fact that the motion request on extension of time for the comprehensive plan and fish and wildlife habitat conservation areas. He noted that the cases have remained separate for more than half a decade and deal with different ordinances, have different petitioners and different intervenors. He countered the County’s claim that the issues of the different cases were tied together by noting that the areas of noncompliance, once wide, are now narrower. He expressed doubts that a few specific concerns with rural development, frequently flooded areas (FFA), geologically hazardous areas (GHA) and fish and wildlife habitat conservation areas (HCA) clearly demonstrate what these issues have in common. He expressed concern about confusion as a result of

consolidation of cases at this late date. He voiced his support of the Board's actions over the years to divide compliance hearings so that the number of issues to be considered on any one occasion was not overwhelming. Mr. Diehl stated that if the County could give specific and legitimate reasons for postponing measures to achieve compliance regarding the comprehensive plan, and fish and wildlife habitat conservation area sections of the resource ordinance, he would not oppose granting an extension of time on those matters. He cautioned, however, that even with an extension, consolidation would not be justified.

Petitioners MCCDC, Dawes, Gordon Jacobson, Vern Rutter and Kerry Holm (MCCDC) claimed that Mason County had not made a showing sufficient or specific enough to warrant consolidation. They declared that the County's recent adoption of the series of exempting-resource ordinances with no prior public hearing suggested the opposite of the County claim of being highly motivated to end the process.

CONCLUSIONS

Consolidation

Consolidation of these cases would create an undue burden upon parties to each case and an administrative nightmare in the event we were called upon to certify the record for an appeal to Superior Court. The cases even now are subject to petitions for judicial review in Superior Court. The cases share only six parties in common. Eight parties are attached only to one case or another. Most of these "one-case" parties, some of whom are *pro se*, would be called upon under consolidation to serve copies of all pleadings to additional individuals who are now not parties to their case.

The County's contention that some issues are tied together is true, but they are not tied together between the two cases. There are issues in common between the HCA portion of *Diehl* and the GHA portion. Some of these extend to the FFA portion of *Diehl*. None of these are "tied in" with the CP issues in *Dawes* which are generally centered around the question of density and permitted use. It is true that the County's shortcomings in providing final and adequate maps are common to both cases, but the maps in each case are different. The County has failed to demonstrate any compelling reason to consolidate these cases. We deny the motion to consolidate.

Common Compliance Date

The question of a common compliance date, however, is another matter. We are willing to consider a 3-month extension for the compliance date for HCA and for comprehensive plan compliance in order that the County may take advantage of OCD financial and technical resources, and allow the new principals working on its response to remand, including Planning Director Ron Henrickson and new Deputy Prosecutor Darren Nienaber to become more familiar with the cases. We will reserve judgment on continuing to separate the briefing and hearing schedules for the two cases. We also respond favorably to the County's commitment to status reports on September 28 and November 30, 2001. The November 30 report should detail the steps taken to achieve compliance in each case. The motion to set a common action date of December 11, 2001, is granted.

The new compliance due date for Case #95-2-0073 (HCA, GHA, FFA) and Case #96-2-0023c is December 11, 2001. Status reports are due September 28, 2001, and November 30, 2001.

So ORDERED this 24th day of August, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Presiding Officer