

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

QUAIL CONSTRUCTION, INC.,)	
)	
Petitioner,)	No. 97-2-0005
)	
vs.)	ORDER GRANTING
)	DISPOSITIVE
CITY OF VANCOUVER,)	MOTION
)	
Respondent.)	
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On April 11, 1997, we received a Dispositive Motion from the City of Vancouver asserting that the issues raised by Petitioner Quail Construction were not subject to review because there was no Growth Management Act (GMA)-directed action taken by the City Council. A telephonic hearing was held on May 5, 1997. Present were all three members of the Board, Mr. Mark Erickson representing Quail Construction, and Mr. Michael Karber representing the City of Vancouver.

DISCUSSION

The City maintained that the Petitioner had ample prior opportunity to challenge the City's agricultural open-space (A/O) zoning designation, but failed to do so. On November 1, 1994, the A/O designation was applied to the parcel known colloquially as a part of "the Lettuce Fields". The City argued that the A/O zoning designation was conclusively valid, not having been appealed within 60 days after publication. Thus, the City Council's failure to adopt an amendment to the comprehensive plan did not constitute an action that was appealable under the Growth Management Act.

The City asserted that a failure to choose to adopt an amendment when no amendment was required by the Act, is not an action subject to challenge. The City cited *Cole v. Pierce County CPSGMHB #96-3-0009* which noted that RCW 36.70A.130 "only authorized amendments, it does not create a duty to adopt them".

Petitioner asserted that the failure to adopt the amendment was contrary to one of the goals of GMA. The City contended that the Petitioner's assertion failed to recognize that a decision to decline to amend a conclusively valid comprehensive plan cannot be contrary to the goals of GMA.

In opposition, Quail Construction asserted that a petition may be brought at any time challenging a Respondent's failure to adopt a comprehensive plan consistent with RCW 36.70A.160. In this assertion, Quail relied upon WAC 242-02-220(5) which allows a failure-to-act petition to be filed anytime after a deadline specified in the Act has passed.

Quail also maintained that the City "adopted" RCW 36.70A.290 regarding challenges to its comprehensive plan. Section .290, Petitioner observed, provided for appeal within 60 days of publication of an ordinance adopting an amendment to the CP. This, it contended, constituted an ongoing invitation to petition under WAC 242-02-220(5) because it related to the failure of the City to take an action by a deadline specified in the Act. In response to questions from the Board, Counsel for Petitioner was unable to identify such a deadline. Counsel maintained that the alleged failure of the City to adopt transfer of development rights for in-city agricultural lands constituted a failure to act that, in his words, "trumped" the 60-day requirement of section .290.

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CONCLUSION

We find the City's arguments to be persuasive. Contrary to Petitioner's contention, an unchallenged failure to establish transfer of development rights does not "trump" the requirement to petition within 60 days of CP publication notice. We find that the comprehensive plan's agricultural open-space section was not challenged within the statutory 60 days. Further, we find that an action by the City Council opting not to amend a valid plan is not an action over which this Board has jurisdiction. WAC 242-02-220 (5) does not apply as there is no deadline specified in the Act that was not met by the Council's decision not to adopt the amendment.

ORDER

The Dispositive Motion by the City of Vancouver is granted. Case #97-2-0005 is dismissed.

SO ORDERED this 6th day of May, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William Nielsen
Board Member

Nan A. Henriksen
Board Member