BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

SHERILYN C. WELLS, et al.,	)	
	)	No. 97-2-0030c
Petitioners,	)	
v.	)	ORDER ON WELLS'
	)	JUNE 4, 1998
WHATCOM COUNTY,	)	MOTION FOR
	)	RECONSIDERATION
Respondent,	)	
	)	
and	)	
	)	
MICHAEL and JEAN FREESTONE, et al.,	)	
	)	
Intervenors.	)	
	)	

The Final Decision and Order (FDO) in Case #97-2-0030c was issued on January 16, 1998, and amended January 22 and February 17, 1998. Petitioner Wells appealed the FDO in Skagit County Superior Court. *Sherilyn Wells v. Western Washington Growth Management Hearings Board*, No. 98-2-00213-4. Case #97-2-0030c included compliance proceedings of Cases #94-2-0009 and #96-2-0008. Parties to Cases #94-2-0009 and #96-2-0008 were served with the FDO in Case #97-2-0030c. However, the City of Nooksack, a party to Case #94-2-0009, was not served with the FDO in Case #97-2-0030c until May 28, 1998. Petitioner Wells filed a motion for reconsideration on June 4, 1998. Wells' Motion for Reconsideration is denied, because it is untimely and is beyond the Board's jurisdiction.

A petition for reconsideration of a final Board order must be filed within ten days of service of that order. WAC 242-02-832. Wells relies on *Devore v. Dep't of Social and Health Services*, 80 Wn. App. 177 (1995), to argue that the May 28, 1998 service of the FDO on Nooksack triggers the ten-day period for filing a petition for reconsideration.

The issue in *Devore* was whether, under the Administrative Procedure Act, chapter 34.05 RCW, the petitioner's judicial appeal was timely. 80 Wn. App. at 180. The Court of Appeals noted that,

for judicial appeal of an agency order under the APA, the 30-day period for seeking judicial review did not start running until all parties were served with the agency's final order. *Devore*, 80 Wn. App. at 181-82.

Devore is not relevant in the Board's review of Wells' Motion for Reconsideration. Wells does not apply *Devore* to seek judicial review of an agency decision; Wells attempts to apply *Devore* to obtain Board reconsideration of its final order. Since the Skagit County Superior Court has accepted jurisdiction over Wells' judicial appeal, *Devore* has no application in this case. Consequently, Wells' Motion for Reconsideration is untimely.

Also, to the extent Wells may be protecting her right to judicial appeal by exhausting administrative remedies, her motion for reconsideration is unnecessary. Filing for Board reconsideration of its final order is not necessary to obtain judicial review. RCW 34.05.470(5).

Finally, Intervenor Sudden Valley Community Association urges that the Board lacks jurisdiction over those issues that are on appeal to the Superior Court. "It is the general rule that the jurisdiction of an administrative agency over a particular matter ends when its decision is appealed to the court. The reason is that the court's jurisdiction 'must be complete and not subject to being interfered with or frustrated by concurrent action by the administrative body.'" Martin v. Dayton School Dist. No. 2, 85 Wn.2d 411, 413 (1975) (citation omitted). The issue Wells presents for reconsideration is the issue before the Superior Court. *Sherilyn Wells v. Western Washington Growth Management Hearings Board*, No. 98-2-00213-4, Petition for Review at 7-9. Consequently, Wells' Motion for Reconsideration is beyond the Board's jurisdiction.

ORDER

Wells' Motion for Reconsideration is denied.

So ORDERED this 2nd day of July, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge

Board Member

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Nan A. Henriksen
Board Member