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

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|--------------------------------|---|-----------------|
| CITIZENS FOR MOUNT VERNON and, |) | |
| CONCERNED CITIZENS OF MOUNT |) | No. 98-2-0006c |
| VERNON, |) | |
| Petitioners, |) | ORDER ON |
| |) | RECONSIDERATION |
| v. |) | |
| |) | |
| CITY OF MOUNT VERNON, |) | |
| |) | |
| Respondent, |) | |
| |) | |
| and |) | |
| |) | |
| BRIAR DEVELOPMENT COMPANY, |) | |
| |) | |
| Intervenor. |) | |
| _____ |) | |

As part of our final decision and order (FDO) in this case we held that the issue of substantial interference and invalidity were not properly before us. At page 5 of the FDO we said:

“....The claim of invalidity was not contained in the statement of issues in any of the original or amended petitions. The claim was contained in the relief-requested section of the petitions. Significantly, invalidity was not set forth as an issue in either the original or supplemental prehearing orders. The 1997 amendment to RCW 36.70A.290(1) provides *clear legislative direction* that, absent a claim in the statement of issues or prehearing order, a Board is precluded from deciding or addressing an issue. This is not a hyper-technical matter, but rather clear legislative policy which we will not waive....” (emphasis supplied)

On August 3, 1998, we received a motion by petitioners for reconsideration. Because Mr. Eldridge was not available to consider the motion until August 24, 1998, we sent a memo to the

parties indicating a decision would be made after that time and an order would be issued. The City and Briar Development Company (Briar) were allowed (but not required) to file a response to the motion. A response from Briar was received August 24, 1998. A memo from the City of Mount Vernon incorporating Briar's response was received August 25, 1998.

We deny the motion for reconsideration. As we noted in the FDO, the 1997 amendment to RCW 36.70A.290(1) provides specific legislative direction that prohibits a ruling on issues not presented in the petition's statement of issues, as modified by any prehearing order. Under RCW 36.70A.302(1)(b) a board may make a "determination of invalidity" if it finds there is substantial interference with the fulfillment of the goals of the Growth Management Act (GMA, Act). Under RCW 36.70A.320 petitioner has the burden of proving substantial interference with fulfillment of the goals of the Act. *CCNCR, et al. v. Clark Count, et al*, #96-2-0017 (Order dated November 2, 1997). Thus, the requested remedy may well be a "determination of invalidity" but in order to reach that remedy the issue of "substantial interference with fulfillment of the goals of the Act" must properly be raised under the provisions of RCW 36.70A.290(1).

The motion for reconsideration is denied.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this ____ day of September, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

