

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

CITIZENS FOR MOUNT VERNON,)	
)	No. 98-2-0012
Petitioner,)	
)	ORDER RE:
v.)	MOTIONS
))
CITY OF MOUNT VERNON,)	
)	
Respondent,)	
)	
BRIAR DEVELOPMENT COMPANAY, THE VOCAL)	
MAJORITY and DELORES IRWIN,)	
)	
Intervenors.)	
_____)	

On September 16, 1998, a telephonic motions hearing was held regarding four motions made by Citizens for Mount Vernon (CMV). Present were Shirley Viscalla representing CMV; Linford Smith representing the City of Mount Vernon; Jay Derr representing Intervenor Briar Development; and Joseph Barcott representing Intervenors Vocal Majority and Delores Irwin. All three Board members were present.

The first motion requested reconsideration of a ruling made by then-presiding officer William H. Nielsen at the prehearing conference. The ruling required any attorney on behalf of CMV to provide notice of appearance seven days in advance of the hearing on the merits. CMV requested that this rule be removed. We note that in an earlier case involving the same parties, CMV retained an attorney two days before the hearing on the merits. The attorney presented arguments more specific than CMV's opening brief. Intervenor Briar and the City were unable to respond without the aid of a posthearing briefing. WAC 242-02-558(10) authorizes the board to enter prehearing orders that address "any matters that may expedite the hearing." We hold that this ruling is essential for the proceedings to advance in an orderly and fair manner. The motion is denied.

The second motion from CMV was to supplement the record with a set of notes taken at a public meeting and an unsigned memorandum, not part of the record. Pursuant to RCW 36.70A.290(4) we do not find that these supplements to the record would be of substantial assistance to the Board in reaching its decision. The motion is denied.

The third motion requested us to reconsider our order granting intervention by the Vocal Majority. We find that the Vocal Majority has an interest in the outcome of these proceedings and that that interest may be impaired if it is not permitted to intervene. The motion is denied.

The fourth motion requested us to reconsider our statement of issues, asserting that Issues a. and c. of the petition for review were ignored. We note that Issue a. of the petition for review asked that we review an opinion of the Supreme Court. We consider Supreme Court decisions as they may be relevant. They are not “issues.” Issue c. concerned “spot-zoning” which is beyond a board’s jurisdiction.

The fourth motion also raised the question of whether CMV’s request for a finding of invalidity was included in the statement of issues. Issue 2 reads as follows: “If there was a violation (of RCW 36.70A.130) did it substantially interfere with the goals of the Act?” We note for the benefit of the petitioner that “substantial interference” is the test for determining whether a finding of invalidity should be made. The issue of invalidity is therefore included in the statement of issues. The statement of issues will stand as set forth in the prehearing order. The motion for reconsideration of the statement of issues is denied.

So ORDERED this 22nd day of September 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member