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

MICHAEL L. ACHEN AND CATHERINE)	
J. ACHEN,)	
)	No. 99-2-0040
Petitioners,)	
)	ORDER RE:
v.)	CONSOLIDATION
)	
CITY OF BATTLE GROUND,)	
)	
Respondent.)	
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On January 12, 2000, Petitioners filed a motion to consolidate the above-entitled case with a previously filed case involving the same parties, #99-2-0020. On January 26, 2000, the City filed a memorandum in opposition. On February 4, 2000, Petitioners filed a response memorandum. A telephonic hearing was held February 11, 2000.

Petitioners requested consolidation under the provisions of RCW 36.70A.290(5). The City opposed the consolidation. It pointed out that the ordinances which were the basis for the challenge in #99-2-0020 had been repealed and/or substantially amended and thus the case was moot. Petitioners' response to the claim of mootness was that it should be denied because there were "unconstitutional practices" and that a decision on the merits would serve the public interest.

We deny Petitioners' request for consolidation of the two cases. RCW 36.70A.290(5) allows consolidation for cases "involving review of the *same* comprehensive plan or the *same* development regulation or regulations." The original #99-2-0020 case involved challenges to Ordinance #99-011. The instant case involves portions of that ordinance which were repealed or

were later amended by Ordinances #99-030 and #99-032. These are not “the same” regulations and thus consolidation is not appropriate.

Although more properly an issue addressed in #99-2-0020, the issue of dismissal because of mootness in that case was raised here and fully briefed and argued by the parties. Petitioners’ basic claim against exercising our discretion to dismiss #99-2-0020 because of mootness revolved around the constitutional violation claim involved in that case and a claim that the public interest would be served by a ruling on the #99-2-0020 issues.

We have always ruled that we do not have jurisdiction to determine constitutional claims. We do not find that the “public interest” would be benefited by a ruling on #99-2-0020.

The #99-2-0020 case was granted an order extending the time for issuance of a final decision and order because of the agreement of the parties that further settlement negotiations and reconsideration of Ordinance #99-011 by the City was appropriate. That is exactly what the parties did in this case after a series of public hearings in which Petitioners participated. The challenges to the new ordinances are essentially the same grounds as #99-2-0020.

We exercise our discretion and find that nothing to benefit the public interest could occur as a result of continuing the #99-2-0020 case. An order of dismissal in that case will be entered.

So ORDERED this 17th day of February, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member