

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

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GUY L. PARSONS, MARTHA A. PARSONS, )  
and JOHN E. DIEHL, )  
 )  
 ) No. 00-2-0030  
 )  
 ) Petitioners, ) ORDER  
 ) GRANTING  
 ) DISPOSITIVE  
 )  
v. )  
MOTION )  
 )  
MASON )  
COUNTY, )  
 )  
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Respondent. )  
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**PROCEDURAL HISTORY**

The first prehearing conference (PHC) in this case was held August 22, 2000. At that conference the County claimed that it had not been properly served with the petition for review (PFR). From information forthcoming subsequent to the conference we determined that the County was served promptly with the PFR. A clerical error in a different office precluded the PFR from reaching the Prosecutor before the first PHC. In order to allow the County time to prepare the index we set the second PHC for September 22, 2000, three days after the revised due date for the index.

At the August PHC Petitioner Diehl, representing the Parsons, was encouraged to make his challenges to the ordinance more specific. The September 22, 2000, PHC was continued until September 29, 2000, at which time we received Petitioner Diehl's restated issues. Those are the issues set forth in the prehearing order.

A telephonic motions hearing was held on October 26, 2000, at 2:30 p.m. Present for the County

was Chief Deputy Prosecutor Mike Clift, and for Petitioners Parsons and Diehl, Mr. John Diehl. Les Eldridge was present for the Board. William H. Nielsen listened to a tape of the proceedings.

A copy of Ordinance #52-00 had not been provided with the County's motion or with Petitioners' response. We received a copy of the ordinance November 7, 2000.

### **ARGUMENT**

Petitioners first addressed their motion to supplement the record, noting that the 1997 agricultural statistics were referenced in part in the Board of County Commissioners' (BOCC) findings of fact and were properly before them. Petitioners suggested we could take official notice of CTED's guidelines and supplemental agricultural department data. The County responded that the admission of the supplemental evidence would give undue emphasis to evidence already in the record and should be excluded.

Speaking to its motion to dismiss, the County first acknowledged that it was incorrect in alleging a lack of standing on the part of the Parsons, as there were letters from the Parsons to the Planning Commission and to the BOCC regarding agricultural lands in the record. The County further acknowledged that, under our rules, Mr. Diehl could represent himself and the Parsons in argument before the Board.

In speaking to the remaining part of its motion to dismiss, the County maintained that Ordinance #52-00 was adopted in response to our earlier remand in the agricultural lands section of this case, solely regarding our requirements that the County clarify its definition of "surrounded by." The County noted our comment in the first PHC memorandum in which we observed that unamended portions of a DR previously found to be compliant could not be challenged on adoption of amendments to the DR in response to a remand.

Petitioners disagreed, and asserted that when new evidence arises regarding parts of a regulation previously found compliant, Petitioners have a right to raise those questions.

Petitioners asserted that they were raising new evidence associated with a reworking of a local ordinance. They declared the new evidence showed that the County had failed to comply with GMA goals and requirements. Petitioners maintained that it is in the public interest that such an action be subject to correction through petition.

The County responded that the issue on remand dealt with the definition of “surrounded” and noted that Petitioner Diehl had filed a motion for reconsideration for that remand raising several of the issues also raised in this case. We previously denied that motion.

Petitioners claimed that the ordinance failed to fulfill Goal 8 of the Act by not maintaining and enhancing productive agricultural industry and by not discouraging incompatible uses that threaten conservation of productive agricultural lands.

Petitioners asserted that the County had failed to adequately designate or properly regulate agricultural resource lands (ARLs). Petitioners also claimed that Section .061.C of the ordinance failed to comply with proper sequencing of GMA actions specified by Section .040, .170, and .060 of the Act.

### CONCLUSION

After a careful reading of Ordinance #52-00, we conclude that the County adopted it solely in response to our remand of August 19, 1999. None of the issues raised in this case were remanded, nor were any portions of the County’s DRs pertaining to these issues amended during the remand period.

We called upon the County to explain the reasons that some agricultural resource lands acreage included in the U.S. Department of Commerce Census of Agriculture was designated, while other acreage was not. We also required the County to clearly define what it meant by “surrounded by” agricultural land and required that the County recheck its ARL acreage for accuracy. The record demonstrates that the County amended its resource DR by Ordinance #52-00 only in response to those three issues. The rest of its agricultural resource land provisions had previously been found

compliant in 1999.

*CCNRC, et al. v. Clark County*, Case #96-2-0017, held that we have no jurisdiction to review substantive issues of an ordinance previously adopted and not challenged within the timeframes of the Act, when those issues remain unchanged and unamended. The issues in the PFR for this case were not addressed in the amendments in Ordinance #52-00 and so are not properly before this Board. Aside from the issues in the remand noted above which are under review in Case #95-2-0073, no other portions of the resource ordinance regarding ARLs previously found compliant were amended.

### **ORDER**

The County's motion is granted. Case #00-2-0030 is dismissed.

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

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 27<sup>th</sup> day of November, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge  
Board Member

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William H. Nielsen  
Board Member