

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

OLYMPIC ENVIRONMENTAL COUNCIL, et al.,)	
)	No. 01-2-0015
Petitioners,)	
)	ORDER DENYING MOTION
v.)	FOR RECONSIDERATION
)	
)	
JEFFERSON COUNTY,)	
)	
Respondent,)	
)	

On January 10, 2002, we issued the final decision and order (FDO) in this case. On January 18, 2002, Jefferson County filed a motion for reconsideration. In the motion, the County stated at p. 1: “The FDO contains certain items that are either ‘misinterpretations of...law’, or if legally correct, are ‘clerical mistakes,’ because they raise as many questions as they answer and do not give this County clear direction as to what it can or cannot undertake pursuant to its GMA-derived authority.”

The motion went on to list nine questions that “arise in the minds of the County’s staff” as to how to proceed to come into compliance.

On January 22, 2002, we issued a request for response to the motion for reconsideration. In that request we stated that the clock on the 90 and 180-day remand periods established in the FDO would not begin until we issue an order on the County’s motion.

On January 28, 2002, we received petitioners’ response to the County’s motion. In its response, petitioners argued that the County has not identified valid grounds for reconsideration and therefore the motion should be denied. Petitioners supported this contention with the following:

“The Practices and Procedures for the Growth Management Hearings Board dictate

the specific grounds for a motion for reconsideration of a Final Decision and Order ('FDO'). These ground are: 'a) errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration; b) irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or c) clerical mistakes in the final decision and order.' WAC 242-02-832(2).

The County in its Motion states that the 'FDO contains certain items that are either 'misinterpretations of...law,' or if legally correct, are 'clerical mistakes,' because they raise as many questions as they answer and do not give the County clear direction as to what it can or cannot undertake pursuant to its GMA-derived authority.' Motion at 1. The County claims that the FDO was legally incorrect when it stated that local governments have the authority to regulate consumption of water from individual wells. Id. at 2. The County also claims that because it has many questions as to how to proceed with the remand, there must have been a clerical error or errors in the FDO. Id.

The County has provided no new information to demonstrate that the Hearings Board's FDO resulted from a misinterpretation of the law. In the Motion, the County has simply repeated its claim that only the Department of Ecology has the authority to regulate individual wells. The Hearings Board has repeatedly found that a motion for reconsideration will be denied when no new arguments are presented that were not considered in the original decision. **Achen v. Clark County**, WWGMHB No. 95-2-0067 (RO 1-20-98) at 1; **CCNRC v. Clark County**, WWGMHB No. 96-2-0017 (RO 1-21-98) at 1.

Also, simply because the County is confused as to how to proceed with the remand does not justify a claim that there were clerical errors in the FDO. In accordance with WAC 242-2-831(1) the Hearings Board is only required in the FDO to find the jurisdiction is or is not in compliance with the requirements of the GMA, and when it is found to be not in compliance, to remand the matter to the agency with a specific time for compliance. The FDO in this case did that and more by providing quite specific language as to the actions needed to be taken by the County to achieve compliance. The County's long-standing confusion as to its GMA responsibility is clearly no justification to find that a clerical error has been made in the FDO for this case.

Given the lack of any new information to support a claim of legal misinterpretations or clerical errors in the FDO, the Hearings Board should deny the County's motion due to lack of grounds for reconsideration. The Board has no obligation to address the questions posed by the County."

Board Discussion and Conclusion

In response to local governments' pleas for help, the 1997 Legislature added RCW 36.70A.3201 to the Act. That section states in part:

“...In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. [1997 c 429 § 2.]...”

The irony does not go unnoticed that, given greater discretion in how to comply, the County now complains that we are not specific enough as to exactly what the County must do to bring itself into compliance. With greater local discretion comes greater local responsibility to make the tough choices as to how it will comply. The Office of Community Development staff, the Department of Ecology staff, and the petitioners may be able to assist the County in developing its choices, but the Legislature has made it perfectly clear that is not our role.

Having carefully reviewed the FDO, we find the petitioners' objections to this motion to be persuasive. Given the lack of any new information to support a claim of legal misinterpretations or clerical errors in the FDO, we deny the County's motion. The County has failed to demonstrate grounds for reconsideration.

It is our practice that a motion for reconsideration tolls the clock on the remand period until the order on reconsideration is issued. Thus, the 90 and 180-day clocks begin today. If the County needs more than 180 days for the most complex of the FDO remand requirements, it must, within 120

days, submit a detailed compliance action timetable and a showing of what action has been taken by then.

Pursuant to WAC 242-02-832(4), this decision constitutes a final decision and order for purposes of judicial review.

So ORDERED this 8th day of February, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member