

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

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| ADVOCATES FOR RESPONSIBLE DEVELOPMENT (ARD), |) | |
| MASON COUNTY COMMUNITY DEVELOPMENT |) | No. 01-2-0025 |
| COUNCIL, JANET DAWES, AND JOHN E. DIEHL |) | |
| |) | ORDER DENYING |
| Petitioners, |) | DISPOSITIVE |
| |) | MOTIONS |
| v. |) | |
| |) | |
| |) | |
| MASON COUNTY, |) | |
| |) | |
| Respondent, |) | |
| |) | |

On December 27, 2001, we held a telephonic motions hearing. Les Eldridge, William H. Nielsen, and Nan Henriksen were present for the Board. Darren Nienaber represented Mason County. Bob Fink and Ron Henrickson of the County's Department of Community Development were also present. John Diehl appeared for petitioners ARD, John Diehl, Janet Dawes, and Mason County Community Development Council.

Procedural Motions

Mason County's November 29, 2001 motion to add to the record and supplement the record was granted. We received no objections to the motion. Exhibits #15-24 were admitted to the record. The petition for review alleged Ordinance 112-01 (the ordinance) failed to comply with RCW 36.70A.040 and .120. The County's December 21, 2001 motion to strike asserted that the paragraph in petitioners' dispositive motion, p. 4 beginning on line 9, was beyond the scope of issues raised in the petition. Yet, the paragraph addressed sections .040 and .120. The motion was denied.

Discussion: Dispositive Motions

The parties' dispositive motions of December 12, 2001 pertained to Issue #2 in the prehearing order. The issue questioned whether the ordinance allowing minor amendments to special use

permits was “without guidelines or adequate procedures to ensure amendments would actually maintain rural character in rural areas, protect critical areas, conserve resource lands, and avoid sprawling low-density development,” and whether the ordinance also substantially interfered with the fulfillment of goals of the Act.

Petitioners argued that the ordinance should contain specific, detailed, objective standards to aid the administrator in exercise of his discretion to decide whether a proposed amendment to a special use permit constituted a significant change in the scope of the permit. Petitioners claimed that section 1.05.048.A lacked clear and detailed criteria and failed to take into account offsite impacts, particularly regarding critical areas functions and values. They noted that the State Environmental Policy Act (SEPA) uses a checklist to provide specific standards. The County contended that the range of amendments to special use permits was so wide as to make it impossible to detail specific concrete standards applicable to every special use. Petitioners countered that the range of uses and elements in WAC 197-11-960 (SEPA environmental checklist) is equally as wide as the range of special use permits. Petitioners expressed the view that the ordinance was so vague and ambiguous as to allow minor projects to create substantial adverse impacts. Petitioners also maintained that the vagueness of the decision criteria would make it very difficult for the administrator’s decision to be reviewed.

Petitioners further argued that SEPA was not a mechanical, deductive process, but was one which merely required the administrator to weigh evidence systematically. Petitioners maintained that it would not be an oppressive burden for the County to develop a process similar to SEPA’s checklist for minor special use permit amendments. Petitioners stated that the ordinance did not prohibit “significant impacts to the environment” but instead called for “no impacts to the environment.” Further, petitioners maintained that the language of the ordinance that called for minor amendments to comply with the “intent” of the Comprehensive Plan was confusing.

Petitioners pointed out that the Planning Commission and the Board of County Commissioners had rejected the planning director’s recommendation to include indirect impacts. They also noted the requirement that amendments approved by the administrator must be consistent with the Comprehensive Plan and developments regulations now in effect. This, they claimed, could be construed as requiring the administrator to make amendments consistent with plans and

regulations which are currently subject to our findings of noncompliance and invalidity.

Both parties stipulated that the issues were simple, that no significant material matter of fact was in dispute and therefore that the issue lent itself to prompt disposition of the case pursuant to WAC 242-02-530(4).

The County argued that there were more than enough criteria to ensure that amendments would have no environmental impact, that public health and safety would be maintained and that the intent of the Comprehensive Plan was met. The County pointed out that the ordinance referenced a number of detailed standards in the implementing development regulations and the Comprehensive Plan.

In response to questions from the Board, the County acknowledged that the range of elements in the SEPA checklist appeared to be comparable to the range of elements which might be considered in amendments to special use permits. The County also acknowledged that the application of this ordinance was primarily in the rural area.

In response to Board questions, petitioners acknowledged that specific and objective standards, if they were required of minor amendments, might indeed be more stringent than existing non-challenged requirements for the initial granting of special use permits.

Conclusion

We conclude that several considerations not fully addressed in the motions and exhibits submitted for this hearing need to be fully briefed and addressed for the Hearing on the Merits. These include:

1. Whether it is compliant with the Act that a County impose more stringent standards for *minor* amendments than the standards used for the granting of the initial special use permit.
2. Whether incorporation by reference of policies and regulations found noncompliant and invalid complies with the Act.
3. Whether the ordinance requirement that the amendments comply with the intent of the comprehensive plan complies with the Act.

Given the need to more fully address these questions, we conclude that consideration of Issue #2 does not lend itself to dispositive action. We deny both dispositive motions.

We encourage both parties to fully brief the considerations we have noted above. Argument and materials submitted for the motions hearing need not be resubmitted in the briefing for the Hearing on the Merits.

We have requested the County Department of Community Development to provide a copy of the set of procedures for the revision of an approved shoreline permit detailed in the Mason County Shoreline Master Program, Chapter 7.13.080 as referenced in Exhibit #1, the Planning Department staff report.

So ORDERED this 31st day of December, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member