

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 The BUILDING ASSOCIATION OF CLARK COUNTY,
4 the CLARK COUNTY ASSOCIATION OF REALTORS,
5 the RESPONSIBLE GROWTH FORUM, and the
6 GREATER VANCOUVER CHAMBER OF
COMMERCE, et al,

7 Petitioners,

8 v.

9
10 CLARK COUNTY and STATE OF WASHINGTON,
11 OFFICE OF FINANCIAL MANAGEMENT,

12 Respondents

13 and,

14 GRAMOR OREGON, INC., JOHN SOMARAKIS,
15 ROBERT FRASIER and GARY RADEMACHER,

16 Intervenor.

No. 04-2-0038c

ORDER DENYING
MOTION TO DISMISS

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19 This matter comes before the Western Washington Growth Management Hearings Board (Board) on
20 the Stipulation, Agreement of Settlement, and Motion to Dismiss filed with the Board on February 4,
21 2005. The following additional briefs were received regarding this motion:

- 22 • Clark County's Argument in Support of Stipulation, Agreement of Settlement, and Motion to
23 Dismiss (February 14, 2005)
- 24 • CCNRC's Opposition to County et al.'s Motion for Remand/Dismissal (February 14, 2005)
- 25 • Petitioners' Joinder in Response of Petitioner DeFrees and Intervenor to Clark County
26 Natural Resources Council's Motion for Clarification or To Intervene and Clark County's
27 Argument in Support of Stipulation, Agreement of Settlement, and Motion to Dismiss
28 (February 14, 2005) signed by the representative of the Petitioners in original Case No.
29 04-2-0024.
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1 Having reviewed the pleadings and briefs submitted by the parties in this case, as well as the files and
2 records herein, the Board enters the following decision and order.
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4 **I. PROCEDURAL BACKGROUND**

5 This case is a consolidation of 14 separate petitions for review: Case Nos. 04-2-0023-25 and Case
6 Nos. 04-2-0028-38. The stipulation and motion for dismissal in this case was signed by the following
7 parties:
8

- 9 • the Building Association of Clark County, the Clark County Association of Realtors, the
10 Responsible Growth Forum, and the Greater Vancouver Chamber of Commerce, Donald Blair,
11 Richard and Pamela Marini, Roger and Bonnie Gregg, Mark and Kathy Leathers, Richard and
12 Barbara Salas, Sharon Y. Miller, Judith and Bruce Wood, and Jerry and Michele Winters
13 (Petitioners in Case No. 04-2-0024)
- 14 • the Washington Department of Financial Management (Respondent in Case No. 04-2-0024)
- 15 • Clark County (Respondent in all cases)
- 16 • Michael J. DeFrees (Petitioner in Case No. 04-2-0025)
- 17 • 1000 Friends of Washington (Petitioner in Case No. 4-2-0028)
- 18 • Walker Farms, Lori and Jim Walker, and David Callaham (Petitioners in Case No. 04-2-0029)
- 19 • Whispering Pines Land Investment and Development, LLC and Joseph N. and Virginia G. Lear
20 (Petitioners in 04-2-0030)
- 21 • Debbie Mera, Joseph N. and Virginia G. Lear, and Whispering Pines Land Investment and
22 Development (Petitioners in Case No. 04-2-0031)
- 23 • Peter J. and Donna Stone and Makim Enterprises (Petitioners in 04-2-0032)
- 24 • John R., Pam, and Christine Philbrook (Petitioners in Case No. 04-2-0033)
- 25 • City of Battleground (Petitioner in Case No. 04-2-0034)
- 26 • Rosemary Parker Living Trust, Rosemary Parker, Trustee (Petitioner in Case No. 04-2-0035)
- 27 • James Parker (Petitioner in Case No. 04-2-0036)
- 28 • Holt Homes, Inc. (Petitioner in Case No. 04-2-0037)
- 29 • Michael S. and Terry Bowyer (Petitioners in 04-2-0038)

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2 However, the petitioner in Case No. 04-2-0023, Clark County Natural Resources Council
3 (“CCNRC”) does not concur in the motion and furthermore opposes the motion. CCNRC’s
4 Opposition to County et al.’s Motion for Remand/Dismissal (February 14, 2005).
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7 The Stipulating Parties ask that the Board both dismiss this case and also remand it to the County so
8 the County can address the issues, set forth in the Prehearing Order, and revise its Comprehensive
9 Plan, Zoning Map, and Zoning Regulations to achieve full compliance with the Growth Management
10 Act. Stipulation, Agreement of Settlement and Motion to Dismiss (February 4, 2005) at 3.
11

12 Despite the fact that Petitioner CCNRC objects to dismissal, the signatories to the stipulated motion
13 argue that a dismissal should be granted because it would be of substantial benefit and in the mutual
14 best interest of the Stipulating Parties. Stipulation, Agreement of Settlement and Motion to Dismiss
15 (February 4, 2005) at 3.
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18 CCNRC is the petitioner in the petition for review assigned WWGMHB Case No. 04-2-0023.
19 CCNRC argues that the consolidated case should not be dismissed for three reasons: 1) because all
20 the parties have not agreed to the dismissal as required by WAC 242-02-070(1); 2) because the Board
21 cannot remand this case to “fix” internally inconsistent petitions; and 3) because remand/dismissal
22 would prejudice the rights of CCNRC in its request for invalidity and in its status as potential
23 Intervenor. CCNRC’s Opposition to County et al.’s Motion for Remand/Dismissal (February 14,
24 2005) at 1. CCNRC has also sought intervenor status in some of the petitions consolidated into the
25 consolidated case. Motion for Clarification or To Intervene (February 2, 2004).
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28 **II. DISCUSSION**

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30 The motion asks the Board to issue an order that is not within its authority. The Board does not have
31 the authority to dismiss a petition for review, without a determination on the merits, if all the parties
32 to the action have not stipulated to dismissal. The Board also lacks authority to remand a case to

1 achieve compliance with the Growth Management Act (Ch. 36.70A RCW) unless the Board has
2 made a finding of noncompliance pursuant to RCW 36.70A.302. In this case, the situation is
3 muddled to some extent because a number of petitions have been consolidated into one case.
4 However, the consolidation of the petitions for review did not alter the requirements with respect to
5 each petition that was consolidated. Those requirements go to both the burden on the petitioners to
6 meet their burden of proving noncompliance and to the right of a petitioner to pursue its case.
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9 The Presiding Officer consolidated these cases¹ pursuant to RCW 36.70A.290(5) because all the
10 petitions challenged Ordinance No. 2004-09-02 and the majority of the petitions also challenged
11 Ordinance No. 2004-09-02A. The statute directs the Board to consolidate petitions that challenge the
12 same legislative enactment “where appropriate.” Consolidation was deemed appropriate in this case
13 as the best way to manage the related petitions for review efficiently.
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16 However, the consolidation of petitions in this case does not affect the petition filing requirements of
17 the Growth Management Act for each underlying petition. These include the requirements that a
18 party file its petition for review within 60 days of the publication of the challenged legislative
19 enactment (RCW 36.70A.290(2)) and that each party have standing as to each “matter” raised for
20 review (RCW 36.70A.280(2) and (4)). Consolidation of petitions is a procedural efficiency; it does
21 not waive the filing and standing requirements for each individual petition that was consolidated. A
22 party to one petition does not become a party to a consolidated petition by virtue of the consolidation.
23 Therefore, even if granted, the motion for intervention by CCNRC would not confer party status on
24 CCNRC as to petitions it did not file.
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27 On the other hand, consolidation of the CCNRC petition with the other petitions for review in this
28 case did not deprive CCNRC of its right to pursue its petition for review. The fact that the parties to
29 other petitions have agreed to dismiss them does not require CCNRC to dismiss *its* petition. Under
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¹ Order Consolidating Cases (December 16, 2004).

1 board rules, the Board can only dismiss a case when all parties stipulate to a dismissal. (WAC 242-
2 02-720). It is not proper for the Board to dismiss the CCNRC petition without either a stipulation on
3 the part of CCNRC to dismiss it or a final decision on the merits of the issues raised in that petition.
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6 In addition to stipulating to a dismissal of the consolidated case, the County has also asked the Board
7 to remand this case to the County to take action on the challenged enactments and bring them into
8 compliance with the GMA. Clark County Argument in Support of Stipulation, Agreement of
9 Settlement and Motion to Dismiss (February 14, 2005) at 4.

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11 This motion confuses two different board actions. If the board dismisses a petition for review upon
12 the motion of all parties to it, then that ends the board's jurisdiction over the case. At that point, there
13 is no petition for review because it has been dismissed. A remand of a case, on the other hand, can
14 only occur if the board finds that the challenged local legislative enactment is not in compliance with
15 the Growth Management Act, State Environmental Policy Act or the Shorelines Management Act.
16 RCW 36.70A.300(3). Since there has been no board finding of noncompliance, the board cannot
17 "remand" the case to the County to bring the challenged ordinances into compliance. Therefore, the
18 Board denies the motion for remand.²
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22 **ORDER**

23 For the foregoing reasons and because not all parties to all the petitions in Case No. 04-2-0038c
24 stipulate to the dismissal of Case No. 04-2-0038c as required by WAC 242-02-720, the Motion to
25 Dismiss the consolidated case is hereby DENIED. The motion for remand is also hereby DENIED
26 for the reasons set out above.
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29 ² We note that the County seems to suggest that the Presiding Officer directed it to engage in "side deals" with the parties
30 when she noted that the County has legislative options of its own with respect to the challenges in this case. Clark
31 County Argument in Support of Stipulation, Agreement of Settlement and Motion to Dismiss, February 14, 2005. This
32 suggestion is entirely mistaken. The Presiding Officer was merely referring to the County's ability to enact legislation
that creates a change in policy, if that is the course the County chooses to pursue. The Board, in contrast, is limited to
determining whether the petitions that have been brought before it have merit.

1 The Board will entertain motions to dismiss any individual petitions in the consolidated case
2 PROVIDED that they are signed by all the parties to the petition upon which dismissal is sought . If
3 the parties anticipate bringing such motions to dismiss individual petitions for review, the Board asks
4 that such motions be brought within SEVEN DAYS of the date of this order so that scheduling may
5 be adjusted accordingly. Responses to such motions to dismiss must be filed within FIVE days of the
6 date of filing of the motion to dismiss so that the Board may act on any such motions expeditiously.
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9 SO ORDERED on this the 15th day of February.

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11 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD
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15 _____
16 Holly Gadbow, Presiding Officer
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19 Margery Hite, Board Member
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23 Gayle Rothrock, Board Member
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