IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF SNOHOMISH

CITIZENS ALLIANCE FOR PROPERTY RIGHTS, JEFFREY WRIGHTS, STAN ALDERMAN, ALAN STUART, DAN COVEY, and J. THOMAS BERNARD, Plaintiffs, vs. RON SIMS, in his official capacity as King County Executive; KING COUNTY, a municipal corporation of the State of Washington; and the METROPOLITAN KING COUNTY COUNCIL, Defendants.	**NO. 04-2-13831-9** **MEMORANDUM DECISION GRANTING DEFENDANT KING COUNTY'S MOTION FOR SUMMARY JUDGMENT**

This case is a facial challenge to the validity of clearing limits found in various ordinances adopted by King County. Plaintiffs allege that the ordinances in question are a violation of RCW 82.02.020. Both parties have moved for summary judgment. Both agree that there are no material facts in dispute. Both argue that this is a case that should be decided as a matter of law.

In this cause of action, plaintiffs are not asserting a "constitutional" takings claim. Nor are they challenging the supporting scientific basis for the ordinances. The relatively narrow issues is whether the limitation of clearing and grading of this ordinances violate RCW 82.02.020.

King County asserts that the ordinances in question are a result of the mandate of the Growth Management Act and hence are not a violation of RCW 92.02.020. Furthermore, King County argues that the ordinances are not a tax or fee as defined by RCW 82.02.020. And, lastly even if a tax or fee there is a sufficient nexus to come within the exception provided within the statute.

The court rejects the notion that the ordinances in question are a result of the mandate of the Growth Management Act and therefore RCW 82.02.020 is not applicable. The Growth management Act does require local jurisdictions to adopt regulations to protect critical areas. But, it does not mandate what those regulations must be. That decision is left to the local jurisdiction. Nothing in the Growth Management Act speaks directly to the effect of RCW 82.02.020.

Furthermore, any imposition of a condition and/or fee is frequently justified on the basis that such is required in order to carry out the purpose of a more generalized statute. For instance, in *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, the city justified its position for a for a 30% "open space" set aside on the basis that such was allowed and/or required by RCW 58.17.110 or RCW 35A.63.100.

The Supreme Court rejected those arguments and found that the 30% open space set aside condition was a tax and violated RCW 82.02.020. There is a difference between an ordinance that is "mandated" by a statute and an ordinance that seeks to implement the policy of the statute. These ordinances were adopted by King County in an effort to implement the Growth Management Act. The act does not mandate any limitation on grading and/or clearing. It has not been established that this is the only way in which a local jurisdiction can respond to the Growth Management Act.

Furthermore in *HEAL v. Central Puget Sound Growth Management Hearings Board*, 96 Wn.App. 522 (1999), it is clear that the Court of Appeals recognized that the GMA and RCW 82.02.020 coexist and that the GMA is not the only statute which requires nexus and proportionality limits on imposed governmental conditions on land use.

King County argues that the ordinances are not a tax and RCW 82.02.020 is not applicable. There is dicta in the 1999 case of *Trimen Development Corp. v. King County*, 124 Wn.2d 261 that would suggest that if the primary purpose of the ordinance is regulation rather than revenue, then the ordinance is not a tax. However, despite this dicta the court then went on to examine the ordinance to determine if it was valid under RCW 82.02.020. And, after such analysis the court concluded that under RCW 82.02.020 "King County correctly assessed the direct impact of Trimen's developments." *Trimen*, 124 Wn.2d at 275. Therefore the Court upheld the imposition of the condition.

In a later case, *Isla Verde*, supra, the Supreme Court in 2004 clearly stated the ordinance that requires a dedication of land or easement is a fee and/or tax.

> "We conclude that the open space set aside condition is an in kind, indirect tax, fee, or charge on new development." *Isla Verde*, 146 Wn.2d 879.

This court concludes that this ordinance is the same as an indirect tax, fee, or charge within the meaning of RCW 82.02.020.

The plaintiffs have not challenged the basis of the scientific data that is the underlying rationale for these ordinances. Nor do the plaintiffs argue that there must be an individual decision made on each parcel of land affected by the ordinance. And, indeed such is not the case. In *Trimen* the court approved impact fees that were based on a general assessment of the need for parks and the general calculation of expected impact

of a development. It found that such was reasonably necessary to mitigate those impacts. It did not require King County to make an individualized analysis of each development. Defendant King County has supplied voluminous data which is not challenged by the plaintiffs that evaluate the overall impacts of the effects of clearing in rural areas. Therefore the nexus required by RCW 82.02.020 has been satisfied.

This court concludes that King County has, under this record, met the requirements of RCW 82.02.020. Therefore, the court will deny the summary judgment motion of the plaintiffs and grant the motion of defendant King County.

DONE IN OPEN COURT this 21 day of December, 2006.

Judge Ronald L. Castleberry

Hon. Ronald Castleberry
October 13, 2006
9:30 a.m.

With Oral Argument

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

CITIZENS ALLIANCE FOR PROPERTY RIGHTS, JEFFREY WRIGHT, STAN ALDERMAN, ALAN STUART, DAN COVEY, and J. THOMAS BERNARD, Plaintiffs, vs. RON SIMS, in his official capacity as King County Executive; KING COUNTY, a municipal corporation of the State of Washington; and the METROPOLITAN KING COUNTY COUNCIL. Defendants.	No. 04-2-13831-9 ORDER GRANTING KING COUNTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON RCW 82.02.020 CLAIM AND ENTRY OF FINAL JUDGEMENT IN FAVOR OF KING COUNTY ORDER DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON RCW 82.02.020 CLAIM {PROPOSED} **Clerk's Action Required**

This matter comes before the Court on plaintiffs' motion for partial summary judgment on their RCW 82.02.020 claim and on King County's cross-motion for partial summary judgment to dismiss plaintiffs' RCW 82.02.020 claim and for entry of final judgment.

Throughout these proceedings, plaintiffs have been represented by Russell Brooks and Brian Hodges of the Pacific Legal Foundation. King County has been represented by Norm

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Maleng, King County Prosecuting Attorney, through Darren Carnell, Stephen Hobbs, and John Briggs, Senior Deputy Prosecuting Attorneys. A hearing was held on October 13, 2006, at 9:30 a.m., at which time the court heard the argument of counsel.

In reviewing these cross-motions for partial summary judgment, this Court has considered:

1) Plaintiffs' Motion and Memorandum in Support of Motion for Summary Judgment on RCW 82.02.020 Claim.
2) Defendant King County's Response in Opposition to Plaintiffs' Motion for Summary Judgment on RCW 82.02.020 claims and King County's Cross-Motion for Partial Summary Judgment to Dismiss Plaintiffs' RCW 82.02.020 claim and for Entry of Final Judgment in Favor of King County, dated September 27, 2006.
3) Third Declaration of Stephen Hobbs, Senior Deputy Prosecuting Attorney, and exhibits attached thereto, dated September 27, 2006.
4) Declaration of Megan Smith, and exhibits attached thereto, dated September 26, 2006
5) Declaration of Derek Booth, and exhibits attached thereto, dated September 25, 2006
6) Declaration of Robert Fuerstenberg, and exhibits attached thereto, dated September 22, 2006
7) Declaration of Curt Crawford, and exhibits attached thereto, dated September 26, 2006.
8) Declaration of Harry Reinert, and exhibits attached thereto, dated September 26, 2006.
9) Declaration of Gino Lucchetti, and exhibits attached thereto, dated September 26, 2006.
10) Declaration of Katy Vanderpool, and exhibits attached thereto, dated December 6, 2005
11) Declation of William Eckel, and exhibits attached thereto, dated September 27, 2006
12) Declaration of Claire Dykeman.
13) Plaintiffs' Reply Memorandum on RCW 82.02.020 claim.
11) _____.
12) _____.

* subject to Order striking certain portions dated 12 Dec. 06 RC

In addition, the court is familiar with, and has considered, all of the briefs and declarations submitted by both parties in support of previous motions in this case.

Being fully apprised in the premises, the Court hereby ENTERS THE FOLLOWING ORDER:

Plaintiffs' motion for summary judgment on RCW 82.02.020 claim is DENIED WITH PREJUDICE.

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IT IS FURTHER ORDERED AND DECREED:

King County's Cross-Motion for Partial Summary Judgment dismissing plaintiffs' RCW 82.02.020 claim is GRANTED. Plaintiffs' first cause of action is hereby DISMISSSED WITH PREJUDICE.

There being no outstanding issues remaining in this action, IT IS FURTHER ORDERED AND DECREED:

FINAL JUDGMENT IS ENTERED IN FAVOR OF KING COUNTY.

DONE IN OPEN COURT this 21 day of ~~October~~ Dec, 2006.

HONORABLE RONALD CASTLEBERRY

Presented By:

NORM MALENG, King County Prosecuting Attorney

By: _____
DARREN E. CARNELL, # 25347
STEPHEN HOBBS, #18935
KRISTEN B. WYNNE, #28513
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Approved as to Form; Notice of Presentation Waived:

By: _____
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