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*Ralph R. Stender*

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON, ex rel ROBERT H. DOULL, ALBERT H. WENDFELDT, L. STEVENSON and JACK H. HARRIS,

Relators,

vs.

HOWARD O'DELL and DEAN McLEAN, THE BOARD OF KING COUNTY COMMISSIONERS, KING COUNTY, WASHINGTON,

No. 520533

Respondents,

vs.

GEORGE ANTOVICH and SELLA ANTOVICH,

Intervenors.

ORAL OPINION

BY: The Hon. MALCOLM DOUGLAS  
DATE: July 23, 1955

1  
2 THE COURT: From every practical consideration the  
3 Court would like to decide this case in favor of the  
4 respondents.

5 The Court is of the opinion and will find as a  
6 matter of fact that the action of the county commissioners  
7 in passing this rezoning resolution was not arbitrary or  
8 capricious, certainly in the lay sense of those terms.

9 I think the action of the county commissioners  
10 was taken after an open hearing with all parties represented  
11 where they gave open-minded consideration to the recommenda-  
12 tion of the Planning Commission and consideration to the  
13 arguments of those objecting and came forth with a decision  
14 that was forthright and honest, not subject to any accusa-  
15 tion of fraud in any respect.

16 On the other hand, I cannot think of any adequate  
17 answer to the arguments of Mr. Ehrlichman as to the lack of  
18 jurisdiction of the commissioners to act upon the petition.

19 The Court is of the opinion that that is true  
20 because King County did not have, on the date of the passing  
21 of this resolution, a Comprehensive Zoning Plan that met the  
22 requirements of the statutes.

23 MR. CLARK: Is your Honor referring to 16623?

24 THE COURT: Just a minute, now. I will make that  
25 clear, I think, when I get through. I do not want to conduct

1 a running debate. I have listened patiently to everything  
 2 counsel had to say and I do not care to be interrupted until  
 3 I get through. Then if there are any questions I will be  
 4 glad to answer them.

5 I refer initially to the provisions of the Session  
 6 Laws of the State of Washington, 1935, Chapter 44, H. B. 103,  
 7 and particularly to Sections 7 and 8 thereof which specify  
 8 what the prerequisites are for a county adopting a Compre-  
 9 hensive Plan.

10 When Resolution 16623, which was adopted on the  
 11 13th of August, 1956, was passed, it was an effort to  
 12 provide a Comprehensive Plan. But one needs only to read  
 13 the Act of 1935 and particularly Sections 7 and 8 to see  
 14 how far short it falls of complying with the provisions of  
 15 that Act of the legislature and in how many respects it  
 16 fails.

17 On the face of it this resolution for adopting the  
 18 Comprehensive Plan for King County is an effort to reach  
 19 back and make valid many things, many documents, that were  
 20 invalid because they had been adopted before there was a  
 21 Comprehensive Plan because someone got the cart before the  
 22 horse.

23 You cannot have enforcible zoning regulations  
 24 until you have a proper Comprehensive Plan adopted in  
 25 compliance with the statutes.

1 I will not go through and enumerate all the  
2 particulars in which the resolution passed on August 13,  
3 1956, falls short because they are so obvious upon a mere  
4 reading of the Statute.

5 Therefore, the original Zoning Code adopted on  
6 May 15, 1956, is invalid because the prior existence of a  
7 Comprehensive Plan is a mandatory jurisdictional requirement.

8 The law requires strict compliance with procedural  
9 requirements. "A like certified copy of any map or plat  
10 referred to or adopted by the ordinance or resolution shall  
11 likewise be filed with the county auditor," is one of the  
12 requirements of the statute which was not complied with.  
13 As I recall the evidence, it appears that neither the  
14 road map referred to nor the fourteen studies included in  
15 the so-called Plan were certified and filed.

16 The reason the statute requires certification  
17 and filing is, of course, to make it possible for interested  
18 citizens to know where they can go and find out what zoning  
19 requirements there are and what they require.

20 It follows that if the Zoning Code of May 15,  
21 1956, is invalid because of failure to comply with the  
22 statutory prerequisites and failure to have a comprehensive  
23 plan that meets the requirements of the statute, then the  
24 Resolution which is an amendment of a Plan and of zoning  
25 regulations which the Court finds to be invalid, the

1 amendment is also invalid and must be held to be an action  
2 taken under resolutions which fail to meet the requirements  
3 of the Act of 1935.

4 As I intimated in my opening words I am reluctant  
5 to make this decision, but because a course has been followed  
6 for a number of years which is lacking in legal validity is  
7 no reason for giving encouragement to the continuation of  
8 such a course or for not meeting the issue squarely when it  
9 is presented.

10 Someone has suggested that such a holding would  
11 create chaos and leave property owners bewildered and uncer-  
12 tain as to where they stand with reference to their properties  
13 as they are affected by the so-called zoning regulations of  
14 the county.

15 This is not the first department of the Superior  
16 Court that has made a similar holding. Whatever trouble  
17 may result from such a decision can, in my opinion, be  
18 cured by prompt and proper remedial measures in the form of  
19 resolutions and in the form of a proper Comprehensive Plan  
20 that does meet the requirements of the statute and of a new  
21 Zoning Code drawn in furtherance of and in harmony with the  
22 basic Comprehensive Plan.

23 True, it will require some weeks of hard work on  
24 the part of the planners and staff of the Planning  
25 Commission and of the county commissioners and the aid of a

1 competent legal staff to guide them; but the shortcomings  
2 that have been brought to the attention of the Court in this  
3 case are all shortcomings for which I think there is a  
4 remedy by proper procedures taken in compliance with the  
5 statutes defining the powers and duties of planning commis-  
6 sions and county commissioners on this subject.

7 The basic prayer of the relators will be granted  
8 and findings and conclusions and judgment in accordance with  
9 this oral opinion may be prepared and presented for the  
10 signature of the Court.

11 (Thereupon, at 3:55 o'clock p.m., June 23, 1953,  
12 the hearing was concluded.)  
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