

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

MR. and MRS. DAVID C.)
KUHLMAN, (for Barri and)
Benjamat Burrows)) CRGC No. CA-S-94-01
)
Petitioner,)
)
v.)
)
SKAMANIA COUNTY,) DECISION
)
Respondent,)
)
and)
)
FRIENDS OF THE COLUMBIA GORGE,)
)
Intervenor/Respondent.)

This is an appeal by Lisa and David Kuhlman from a decision of Skamania County upholding the denial of the Skamania County Planning Director of an application for a residence on a ten-acre parcel of property in the Columbia River Gorge National Scenic Area. We affirm.

The threshold issue is whether the Gorge Commission has jurisdiction. The rules of the Gorge Commission require that a brief "shall be filed with the Commission within 30 days after the date the record is received" by the agency. Rule 350-60-080(1) They state further that: "Failure to file a Request for Review within the time required by this Section shall result in dismissal of the appeal." Id.

In this case, petitioners' brief was filed on January 23, 1995, and therefore was not timely. The period for filing an appeal is jurisdictional and cannot be waived. See Graham Thrift Group v. Pierce County, 75 Wn. App. 263, 267 (1994); McGivney v. Iverson,

Washington Shorelines Hearings Board No. 94-29 (1994); Elliott v. Lane County, 6 Oregon Land Use Board of Appeals 423 (1990); Pilling v. Crook County, 23 Oregon Land Use Board of Appeals 51 (1992) However, in this case, it was petitioner's brief that was not timely, not the appeal. The Gorge Commission's rules also allow an extension of time with the consent of all the parties." Rule 350-60-190(2) With the submission of a statement of consent by all the parties, the appeal is properly before the Gorge Commission.

Petitioners' request reversal of Skamania County's decision denying approval of a residence on a 10-acre parcel of property in a special management area. The Columbia River Gorge National Scenic Area Act specifically bars major development actions in special management areas. 16 USC § 544d(d)(5) A major development action includes the siting of a dwelling on a parcel less than 40 acres in a special management area. 16 USC § 544(j)(4) Thus the Act itself does not allow what petitioners applied for.

Petitioners' nevertheless seek to invoke Rule 350-60-090 (special review process) as a basis to overturn the County's decision. This rule states in pertinent part as follows:

(1) Where the petitioner contends the land use decision eliminates all economic or beneficial use of the property, the petitioner must meet the requirements for request for review in Rule 350-60-080 and the requirements for Special Request for Review as follows:

- (a) Set out the pertinent portions of the ordinance that apply;
- (b) Describe how the ordinance impacts the use of the property;
- (c) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

- (d) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(2) All other parties shall have the opportunity to specifically respond to the petitioner's request under this section in their briefs and the development review officer designated by the Executive Director shall also respond..

(3) The Commission, in its "Final Opinion and Order", shall

- (a) Address the subject of economic or beneficial use in its findings of fact and conclusions.
- (b) Specify the factual and/or legal principles relied on in support of the decision.
- (c) Where appropriate, propose options for use for the property owner, or other options available to the petitioner consistent with the ordinance.
- (d) Where the Commission finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Commission shall remand the matter to the county for the county to allow a use as provided for by the order of the Commission. The economic or beneficial use allowed shall be the use that on balance best protects the affected resources. This section applies:
 - (A) if the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or
 - (B) for a General Management Area designation made by the Gorge Commission.

350-60-090. (emphasis supplied)

A review of the record reveals a failure to comply with these requirements. Petitioners have not "describe[d] how the ordinance impacts the use of the property" under section (b) of the rule. Nor have they "explain[ed] why the requested use must be allowed to provide economic or beneficial use of the property" under section

(d) of the rule. Under these circumstances, the Gorge Commission does not have any basis to consider the relief provided in Rule 350-60-090. An agency cannot address an inverse condemnation claim in a vacuum. Orion Corporation v. State, 109 Wn.2d 621, 747 P.2d 1062 (1987) The process set forth there is not before the Gorge Commission because petitioners have not met the requirements of the rule. The Gorge Commission exercises only appellate jurisdiction and does not conduct de novo hearings in appeals from county decisions. The County's denial of the application was thus correct as set forth in the findings and conclusions made by its director in the proceedings below. (Rec. 32-34)

Dated this 14 day of March, 1995.



ROBERT THOMPSON
Chair
Columbia River Gorge Commission