ASSIGNMENTS OF ERROR

3. It was error for the Circuit Court to dismiss the Rules on the ground that the Mehras did not willfully violate the Final Order because civil contempt does not require a finding of willfulness.

4. Even if one assumes *arguendo* that willfulness is a relevant consideration in a civil contempt proceeding, the Circuit Court erred in failing to find the Mehras in contempt of court when the evidence established that the Mehras failed to comply with the Final Order based on their own financial priorities.

MDW
6/26/09

OK

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Jimmie Jenkins, Director
DPWES
Plaintiff / Complainant

v.

Mehra
Defendant

Case No. CL2007-11679

ORDER

This cause came to be heard on the 26 day of June, 2009, on the Plaintiff's / ~~Defendant's~~ motion for Contempt.

No ord

Upon the matters presented to the Court at the hearing, it is **ORDERED** as follows:

The Court finds that the terms of the Order of September 12, 2008 have not been met, but that the violation is not willful and therefore not contemptuous, whereupon the Rule to Show Cause is hereby dismissed.

Entered this 26 day of June, 2009.

Judge Marcus D. Williams

SEEN: And objected to:

Counsel for Plaintiff(s)

Counsel for Defendant (s)

on the grounds that ~~or~~ willfulness is not a necessary element of civil contempt.

~~civil contempt need not be~~

000131

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MDW
7/16/09

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JIMMIE D. JENKINS, DIRECTOR, FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES,	:	
Plaintiff,	:	
v.	:	**CASE NO. CL-2007-11679**
RAJ MEHRA, et al.,	:	
Defendants.	:	

ORDER OF SUSPENSION

THIS CAUSE is before the Court upon the Motion for Reconsideration filed by Plaintiff Jimmie D. Jenkins, Director, Fairfax County Department of Public Works and Environmental Services ("Plaintiff"), to reconsider and vacate this Court's ruling of June 26, 2009, Order ("Order"); and

IT APPEARING TO THE COURT that under Rule 1:1 of the Rules of the Supreme Court of Virginia (2009) this Court will lose jurisdiction to modify or vacate the Court's Order on July 17, 2009; and

IT FURTHER APPEARING TO THE COURT that additional time is necessary to consider the merits of the Plaintiff's Motion for Reconsideration; now therefore, it is hereby

ADJUDGED AND ORDERED that the Order is suspended until further Order by this Court.

THIS CAUSE IS CONTINUED.

copies: Gov. / Foster, Baskin

8/31/9

ENTERED this 16 day of July 2009.

Marcus D. Williams, Judge,
Fairfax County Circuit Court

WE ASK FOR THIS:

DAVID P. BOBZIEN
COUNTY ATTORNEY

By: _____

Laura S. Gori (VSB No. 65907)
Assistant County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035-0064
(703) 324-2421; (703) 324-2675 (fax)
Counsel for the Plaintiff, Eileen M. McLane,
Fairfax County Zoning Administrator

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RECEIVED 09 SEP 17 AM 11:42

Jimmie D. Jenkins, Director, Fairfax County Department of Public Works And Environmental Services, Plaintiff,	)	
versus	)	CL-2007-11679
Raj Mehra, et al. Defendants.	)	

ORDER

THIS MATTER came before the Court on the Plaintiff's Motion for Reconsideration of the Court's ruling on June 26, 2009; and,

IT APPEARING that a trial court "has the authority to hold [an] offending party in contempt for acting in bad faith or for willful disobedience of its order" *Alexander v. Alexander*, 12 Va. App. 691, 696, 406 S.E.2d 666, 669 (1991) (citation omitted); and

IT FURTHER APPEARING that it does not present arguments not previously raised or which alter this Court's finding that the Defendants' failure to comply with the Court's Order of September 12, 2008 was not in bad faith or willful disobedience of its Order; it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff's Motion for Reconsideration is DENIED and the Order of Suspension of July 16, 2009 is hereby VACATED.

ENTERED on this 10th day of August, 2009.

Judge Marcus D. Williams

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JIMMIE D. JENKINS, DIRECTOR, FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES,	:	
Plaintiff,	:	
v.	:	**CASE NO. CL-2007-11679**
RAJ MEHRA	:	
and	:	
URVASHI MEHRA,	:	
Defendants.	:	

ORDER

THIS CAUSE came before the Court by the consent of the Plaintiff Jimmie D. Jenkins, Director (the "Director"), Fairfax County Department of Public Works and Environmental Services ("DPWES"), and Defendants Raj Mehra and Urvashi Mehra ("the Mehras") for entry of this Consent Order; and

IT APPEARING TO THE COURT that the property that is the subject of this Consent Order is located at 7736 Lewinsville Road, McLean, Virginia (Tax Map No. 29-2((1)) parcel 19) ("the subject property"). The Mehras are the owners of the subject property by virtue of a deed recorded in the land records of Fairfax County, Virginia, on October 2, 2000, in Deed Book 11544, at Page 1180; and

IT FURTHER APPEARING TO THE COURT that this is an enforcement action brought by the Director to enforce Chapters 104 (Erosion and Sediment Control Ordinance) and 118 (Chesapeake Bay Preservation Ordinance) of The Code of the County of Fairfax, Virginia (hereinafter "Fairfax County Code"), and Section 6-0202.4 of the Public Facilities

EXHIBIT B

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Manual of Fairfax County, Virginia ("PFM"), against the Mehras for (i) adversely affecting neighboring properties with excessive stormwater runoff caused by inadequate outfall and/or by constructing excessive impervious areas on the subject property, and (ii) constructing improvements on the subject property resulting in an impervious area that is greater than 18 percent of the total area of the subject property; and

IT FURTHER APPEARING TO THE COURT that the parties agree that the terms of this Consent Order are reasonable and shall not be modified except by the written agreement of the parties and the approval of this Court; and

IT FURTHER APPEARING TO THE COURT that the parties have agreed to settle this case under the terms and conditions set forth herein, as evidenced by the endorsements hereon of counsel for all of the parties; and

IT FURTHER APPEARING TO THE COURT that this Consent Order should be entered; now, therefore, it is hereby

ADJUDGED and ORDERED that the subject property is in violation of Fairfax County Code §§ 104-1-2, 104-1-5, and PFM § 6-0202.4; and it is

FURTHER ADJUDGED and ORDERED that the subject property is in violation of Fairfax County Code § 118-3-2(f) because it contains an impervious area greater than 18 percent of the total area of the subject property; and it is

FURTHER ADJUDGED and ORDERED that the Mehras shall restore the subject property in accordance with the following schedule:

a. The Mehras shall, within 30 days of entry of this Consent Order, submit for review to DPWES a request for a waiver or modification of the requirements of § 118-3-2 of the Chesapeake Bay Preservation Ordinance ("modification"), to establish a

vegetative buffer and, upon a response from the Director, DPWES, as to the request for a modification, submit an "Infill Lot Grading Plan" prepared by a registered licensed professional which meets the applicable County requirements as set forth in paragraph (b) below.

b. The Mehras' Infill Lot Grading Plan shall (1) show, if the request for a modification is approved, a vegetative buffer of the size and location authorized by the approved modification, incorporate all planting required by the approved modification, incorporate erosion and sediment control measures that shall be in effect while the buffer is being installed, and include an adequate outfall analysis that complies with the requirements of the PFM; or (2) if the request for a waiver of modification is not approved, identify all impervious surface area on the subject property, to include identification of the amount of impervious area that exceeds 18 percent, set forth drainage computations for the subject property, provide storm drainage improvements (i.e., adequate outfall) to control the stormwater run off from the subject property in accordance with PFM §§ 6-0200 through 6-0205 and document compliance with all applicable County water quality requirements pursuant to Fairfax County Code § 118-3-2(f).

c. All necessary resubmissions or corrections shall be submitted to DPWES within 14 days of the return of such plans to the Mehras or their registered licensed professional.

d. Within 14 days following approval by DPWES of a Infill Lot Grading Plan, the Mehras shall apply for the necessary land-disturbing activity permits, as well as any other required permits, and shall post all necessary bond and/or escrow funds that

may be required by DPWES. The Mehras shall diligently and expeditiously pursue approval of all required permits.

e. The Mehras shall, within 60 days following issuance of all required County permits, fully implement the approved Infill Lot Grading Plan and pass all necessary County inspections.

FURTHER ADJUDGED and ORDERED that the Mehras, their agents, and/or employees shall maintain all storm water and erosion control improvements and plantings on the subject property as shown on the Infill Lot Grading Plan in a functioning condition and in compliance with Fairfax County Code §§ 104-1-2 and 104-1-5 and PFM § 6-0202.4 and maintain compliance with water quality requirements pursuant to Fairfax County Code § 118-3-2(f); and it is

FURTHER ADJUDGED and ORDERED that the Director of DPWES and his agents may enter onto, inspect, and photograph the subject property to ensure that the Mehras have complied with all of the terms and conditions of this Consent Order; and it is

FURTHER ADJUDGED and ORDERED that upon completion and satisfactory inspection of the approved improvements the Plaintiff shall cause this judgment to be released of record.

THIS CAUSE IS ENDED.

ENTERED this 12th day of September 2008.

Judge, Fairfax County Circuit Court

WE ASK FOR THIS:

DAVID P. BOBZIEN
COUNTY ATTORNEY

By: _____ With objection to omission of recordation of Order among the Land Records and binding on successors-in-interest provision Regarding

Laura S. Gori (VSB No. 65907)
Assistant County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035-0064
(703) 324-2421
(703) 324-2665 (fax)
Counsel for Plaintiff Jimmie D. Jenkins, Director, Department of Public Works and Environmental Services

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SEEN AND AGREED:

BASKIN JACKSON HANSBARGER & DUFFETT

By: _____

William M. Baskin, Jr. (VSB No. 16068)
301 Park Avenue
Falls Church, Virginia 22046
(703) 534-3610
(703) 536-7315 (Fax)
Counsel for Defendants Raj Mehra and Urvashi Mehra

A COPY TESTE:
JOHN T. FREY, CLERK
BY: Susan D. Copeland
Deputy Clerk
Date: 9-12-08
Original retained in the office of the Clerk of the Circuit Court of Fairfax County, Virginia

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