

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

ANDY MUELLER, MUELLER	)	Case No. 03-3-0021
CONSTRUCTION COMPANY, LAND	)	
USE PROFESSIONALS FORUM,	)	<i>(Mueller)</i>
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER OF DISMISSAL</b>
	)	
CITY OF BAINBRIDGE ISLAND,	)	
	)	
Respondent.	)	
	)	

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**I. BACKGROUND**

On November 14, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Andy Mueller, Mueller Construction Company, Land Use Professionals Forum (**Petitioners** or **Mueller**). The matter was assigned Case No. 03-3-0021. Petitioners challenge the City of Bainbridge Island’s (**Respondent** or the **City**) adoption of Ordinance No. 2003-02 (the **Ordinance**). The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On November 24, 2003, the Board issued a “Notice of Hearing” (the **Notice**) and on December 15, 2003, the Board conducted the prehearing conference on this matter.

On December 22, 2003, The Board issued “Prehearing Order” (**PHO**). The PHO included a final schedule for the proceedings in this case.

On February 19, 2004, the Board received “Stipulation and Joint Request to Extend Time” (**Stipulation for Settlement Extension**) and on February 20, 2004 the Board issued an “Order Granting Settlement Extension and Amending Case Schedule.”

On May 17, 2004 the Board received “Stipulation and Joint Request to Extend Time” (**Stipulation for Second Settlement Extension**) and on May 20, 2004 the Board issued its Order Granting Second Settlement Extension and Amending Case Schedule.

On August 3, 2004 the Board received Stipulation and Order of Dismissal (**Stipulation of Dismissal**).

## II. DISCUSSION

WAC 242-02-720 provides, in relevant part:

Any action may be dismissed by a board:

- (1) When all parties stipulate;

...

The Stipulation of Dismissal states:

Andy Mueller, Mueller Construction Company, and Land Use Professionals Forum (“Petitioners”), and the City of Bainbridge Island (“Respondent”), by and through their undersigned attorneys of record, hereby stipulate that the above-entitled action shall be dismissed without prejudice and without attorney fees or costs to any party.

The Board finds:

1. All the parties to Case No.03-3-0021 have stipulated to dismissal of the case.
2. The date for the hearing on the merits in this case was previously set as September 27, 2004.

The Board concludes:

The Board may dismiss Case No. 03-3-0021 because all parties have stipulated to the dismissal.

## III. ORDER

Based upon review of the Stipulation to Dismiss, the relevant law, and the findings and conclusion noted above, the Board enters the following Order:

1. Case No. 03-3-0021 is **dismissed**, with prejudice.<sup>1</sup>
2. The Hearing on the Merits scheduled for September 27, 2004 is **cancelled**.

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<sup>1</sup> While the Stipulation of Dismissal requested dismissal without prejudice, the Board is not able to do so because it would be equivalent to an indefinite extension of the case. Under this dismissal, with prejudice, Petitioners may not reopen the same challenge to Ordinance No.2003-02 presented in the PFR for this case, unless the matter is remanded to the Board by the courts. However, this dismissal does not preclude Petitioners from appealing subsequent ordinances dealing with the same subject matter.

So ORDERED this 16<sup>th</sup> day of August, 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP  
Presiding Officer

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Edward G. McGuire, AICP

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.