

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

TED ROHWEIN	)	
	)	<b>Case No. 07-3-0022</b>
Petitioners,	)	<i>(Rohwein)</i>
	)	
v.	)	
	)	
KITSAP COUNTY	)	<b>ORDER OF DISMISSAL</b>
	)	
Respondent.	)	
	)	

---

**I. BACKGROUND**

On February 21, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Ted Rohwein (**Petitioner** or **Rohwein**). The matter was assigned Case No. 07-3-0022, and is hereafter referred to as *Rohwein v. Kitsap County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner appears to challenge Kitsap County’s adoption of Ordinance No. 370-2006 – the County’s 10-year Plan Update. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On February 23, 2007, the Board issued its “Notice of Hearing and Possible Consolidation” in the above-captioned case. The Order noted that the Board may consolidate this matter with Dyes Inlet Preservation Council, CPSGMHB Case No. 07-3-0021, and established a tentative schedule for the case along with a date for a prehearing conference (**PHC**).

On March 22, 2007, the Board conducted the PHC at the Board’s offices in Seattle. While the Board coordinated this PHC with the *Dyes Inlet* matter, the Board chose not to consolidate the cases and indicated it would issue a separate prehearing order (**PHO**) in the *Rohwein* matter.

Petitioner’s PFR expressed concern with the County’s action in changing a Comprehensive Plan and zoning designation from urban to rural (Urban Restricted to Rural Residential), as it affected the Petitioner’s property. However, since the PFR was unclear as to which GMA provisions the County had allegedly failed to comply with, Petitioner Rohwein was given until March 26, 2007 to restate or reformulate the Legal Issues for the Board to decide. Petitioner was notified that the original PFR set the general bounds of Legal Issues to be considered.

On March 26, 2007, the Board received Petitioner Rohwein's "Petition for Review Amended". The Amended PFR set forth four Legal Issues [A-D].<sup>1</sup>

On March 28, 2007, the Board received "Kitsap County's Objections to Rohwein's Amended Petition for Review." The County objected to issues A, B, and C, alleging that these issues were not within the parameters of the original PFR. The Board agreed, and confined Petitioner Rohwein to a single Legal Issue - D. The PHO, issued on March 29, 2007, set forth the final schedule for this matter.

On April 12, 2007, the Board received "Kitsap County's Motion to Dismiss Petition for Review" (**Kitsap Motion**). A Declaration of Angie Silva and an Affidavit of Publication [Exhibit A] were attached to the Kitsap Motion.

Petitioner did not respond to the County's Motion.

On April 30, 2007, the Board received "Kitsap County's Reply re: Motion to Dismiss Petition for Review" (**Kitsap Reply**).

The motions filed were timely. The Board did not hold a hearing on the motions.

## **II. DISCUSSION OF MOTION TO DISMISS**

In its motion, the County argues that the Rohwein PFR was not properly served upon the County and that the PFR was not filed in a timely manner with the Board. Kitsap Motion, at 1. The County asserts that the PFR was filed beyond the GMA's 60-day deadline, and consequently, it is an untimely filing that is beyond the Board's jurisdiction. Therefore, the County contends, the PFR must be dismissed. *Id.* at 4-5.

Petitioner did not respond to the County's motion.

In its reply, the County contends that since Petitioner did not reply to, or attempt to rebut, the County's motion, the Petitioner has abandoned his legal issue and the PFR must be dismissed. Kitsap Reply, at 1-2.

---

<sup>1</sup> A) *Did Kitsap County (the County) fail to be guided by planning goals set forth in RCW 36.70A.020(1) AND (6) and by the definition of "urban growth" as found in RCW 36.70A.030(17) and RCW 36.70A.110 when the Ten-Year Plan update was adopted?*

B) *Did the County fail to be guided by planning goals set forth in RCW 36.70A.020(12) by the capital facilities plan element requirements of RCW 36.70A.070(3) and (4)?*

C) *Did the County fail to be guided by the definitions of "Rural Character" and "Rural Development" found in RCW 36.70A.030(14) and (15) and by the mandatory elements of the comprehensive plan of RCW 36.70A.070(5)?*

D) *Did the County fail to be guided by and/or comply with the provisions of RCW 36.70A.110(1), (2), (3) and (4)?*

The Board received the Rohwein PFR [CPSGMHB Case No. 07-3-0022] on *February 21, 2007*. See PFR, at 1. The County adopted Ordinance No. 370-2006, among others, on December 11, 2006. Kitsap Motion, at 1-2. The County published its Notice of Adoption in the Kitsap Newspaper Group on *December 20, 2006*. *Id.*; Silva Declaration and Ex. A, Affidavit of Publication.

RCW 36.70A.290(2) is explicit and jurisdictional to Board proceedings, it provides:

All petitions relating to whether or not an adopted comprehensive plan, development regulation or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW *must be filed within sixty days after publication by the legislative bodies of the county or city.*

(Emphasis supplied).

The Board has consistently held, “The Board does not have authority to review petitions for review filed more than sixty days after publication of the jurisdiction’s challenged action. The Board cannot create exceptions that expand this authority.” *Torrance v. King County*, CPSGMHB Case No. 96-3-0038, Order Granting Dispositive Motion, (Mar. 21, 1997), at 5-6. Additionally, the Board has stated, “[RCW 36.70A.290(2)] is unambiguous; if a petition for review is not filed within sixty days after publication, the Board is without authority to review the petition.” *Gain v. Pierce County*, CPSGMHB Case No. 99-3-0019, Order on Dispositive Motions, (Jan. 28, 200), at 3; *See also, Torrance v. King County*, 136 Wn. 2d 783, 792, 966 P.2d 891 (1998) [Affirming the Board’s ruling that it did not have jurisdiction to decide issues raised by a petition filed outside the sixty-day limit.]

The Rohwein PFR was filed February 21, 2007, sixty-one (61) days after publication by Kitsap County.<sup>2</sup> Therefore, the Rohwein PFR is *untimely* and the Board is without jurisdiction to review the Rohwein petition. The Rohwein matter, CPSGMHB Case No. 07-3-0022 is **dismissed with prejudice**.

### **III. ORDER**

---

<sup>2</sup> WAC 242-02-060 entitled, Computation of time, provides:

The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, pursuant to RCW 1.16.050, and then is excluded and the next succeeding day which is neither a Saturday, Sunday or legal holiday is included.

Here, publication occurred on December 20, 2006. Beginning the computation on the next day – December 21, 2006 yields 11 days in December. There were 31 days in January (11+31=42). Thus, the 60<sup>th</sup> day would be the 18<sup>th</sup> day in February. However, February 18, 2007 was a Sunday and Monday February 19<sup>th</sup> was a legal holiday; therefore, February 20, 2007 was day 60 for purposes of filing a PFR. The Rohwein PFR was filed with the Board on February 21, 2007 – the 61<sup>st</sup> day.

Based upon review of the filing dates of the Petition for Review, and dates on the Affidavits of Publication, the motions and materials submitted by the parties, the GMA, Board rules, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

- Kitsap County's Motion to Dismiss the Rohwein Petition for Review is **granted**.
- The matter of *Rohwein v. Kitsap County*, CPSGMHB Case No. 07-3-0022, is **dismissed with prejudice**. All further scheduled hearings on this matter are **cancelled** and the matter of *Rohwein v. Kitsap* is **closed**.

So ORDERED this 3<sup>rd</sup> day of May, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

David O. Earling  
Board Member

---

Edward G. McGuire, AICP  
Board Member

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.<sup>3</sup>

---

<sup>3</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)