

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

PORT OF ANACORTES,

Petitioner,

v.

CITY OF ANACORTES,

Respondent.

No. 03-2-0016

**ORDER
DISMISSING CASE
BASED ON
MOOTNESS**

I. PROCEDURAL HISTORY

On August 11, 2003, the Western Washington Growth Management Hearings Board (the **Board**) received a Petition for Review from the Petitioner, Port of Anacortes. The Respondent is City of Anacortes. This matter was assigned case number 03-2-0016.

Petitioner challenged Zoning Ordinance 2620. The Petition recited that Zoning Ordinance No. 2620 was adopted on June 2, 2003 as an “emergency” measure, and published on June 11, 2003, in summary form. The Petition alleged that Ordinance 2620 does not permit the expansion or siting of new buildings of an essential public facility, the Anacortes Airport, and was adopted without the required findings to support an emergency measure, and without a State Environmental Policy Act (SEPA) determination. The basis for the Petition is noncompliance with the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA).

On August 21, 2003 the Board issued a Prehearing Notice that set a Hearing on the Merits for November 17, 2003 in Anacortes and issued a briefing schedule. On September 9, 2003, the Board held a Prehearing Conference and issued a Prehearing

Order on September 16, 2003 that confirmed the hearing date and time and briefing schedule.

On October 20, 2003 we received Motion to Dismiss Based on Mootness from the Respondent, City of Anacortes. The motion included a copy of Ordinance 2631 that repealed Ordinance 2620 and adopted revised interim zoning for the Port of Anacortes, and a declaration of Ian Munce, the Planning Director and City Attorney for the City.

We have received no reply from the Petitioner, the Port of Anacortes.

II. DISCUSSION

In Case No. 95-3-0081c, *Hayes v. Kitsap County* (4/3/96), the Central Puget Sound Growth Management Hearings Board stated:

Chapter 36.70A RCW does not specifically address the question of mootness; however, the Board has previously applied this doctrine of judicial economy. *See Tacoma, et al., v. Pierce County*, CPSGPHB Case No. 94-3-0001, Order on Dispositive Motions (March 4, 1994) at 14-16. The requisite compelling reasons for proceeding with the review of moot issues have not been provided here. Furthermore, (sic)

Because the County has subsequently enacted Interim Ordinances which repealed and replaced the challenged Emergency Ordinances, the Board **holds that the question of the Emergency Ordinances' compliance with the requirements of Chapter 36.70A RCW is moot.** Absent compelling considerations of public policy, the Board will not hear and decide moot issues. The requisite compelling reasons for proceeding with the review of moot issues have not been provided here. Furthermore, the Board observes that the Interim Ordinances were subject to the filing of petitions for review ...

The situation in Hayes is very similar to the one presented by this case. Because the Port of Anacortes has not responded to the City's Motion to Dismiss Based on Mootness, we have no statement from the Port alleging compelling public policy considerations that would lead this Board to rule on a repealed ordinance. The declaration of Mr. Munce and Ordinance 2631 state that the City has scheduled further meetings with the Port and airport neighbors to address the Port's concerns. Future public meetings are also scheduled. If the Port has concerns about the Interim Ordinance consistency with the Growth Management Act or the State Environmental Policy Act, it can file a petition for review of Ordinance 2631 within 60 days of its adoption pursuant to RCW 36.70A.280.

III. CONCLUSION AND ORDER

Ordinance 2531 repeals challenged Ordinance 2620. Therefore, the issue of whether Ordinance 2620 complies with the GMA or SEPA is moot. Based on our review of the City's Motion to Dismiss, the fact that Ordinance 2531 repeals Ordinance 2620, and the lack of response from the Port of Anacortes, we dismiss the Petition for Review challenging Ordinance 2620 and cancel the hearing on the merits and the briefing schedule.

SO ORDERED on this 6th day of November, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbaw, Board Member

Nan Henriksen, Board Member

Margery Hite, Board Member