CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

GATEWAY OFFICE LLC, Petitioners, v. CITY OF BOTHELL, Respondent,	)	**CPSGMHB Case No. 05-3-0024** **ORDER OF DISMISSAL**

I. BACKGROUND

On March 11, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued the "Prehearing Order and Order on Intervention" (**PHO**) in the case of *Fuhriman II v. City of Bothell*, CPSGMHB Consolidated Case No. 05-3-0025c. The *Fuhriman* matter involved the consolidation of six separate petitions for review[1] (**PFRs**) filed that challenged the City of Bothell' Growth Management Act required Plan Update. The PHO established the schedule for the consolidated matter and set the Legal Issues to be decided for the Board.

The PHO indicated, "[I]f a settlement extension was pursued by any of the Petitioners and the City, the Board would likely bifurcate, or segregate, that portion of the case from the consolidated proceeding." PHO, at 3.

On April 5, 2005, pursuant to a stipulation of the parties, the Board issued an "Order Segregating Gateway Office LLC Petition for Review [CPSGMHB Case No. 05-3-0024] from the Consolidated Case and Granting a 30-Day Settlement Extension" (**Segregation and 1st Extension**).

On June 7, 2005, pursuant to a stipulation of the parties, the Board issued an "Order Granting a Second 60-Day Settlement Extension" (**2nd Extension**).

On August 11, 2005, pursuant to a stipulation of the parties, the Board issued an "Order Granting Third Settlement Extension [60 days]" (**3rd Extension**). Attached to the 8/11/05 Order was the revised final schedule detailing the deadlines for briefing, and the hearing on the merits and final decision and order dates. 3rd Extension, at 3.

[1] The six PFRs are: 05-3-0005 [Fuhriman], 05-3-0021 [MBA], 05-3-0022 [North Creek Village], 05-3-0023 [Phillips], 05-3-0024 [Gateway], and 05-3-0025 [Futurewise]. The *Fuhriman II* matter was heard on June 24, 2005 and the Final Decision and Order was issued on August 29, 2005. The Board found that the City had complied with the GMA.

On September 16, 2005, the Board received "Notice of Withdrawal and Substitution of Counsel, Effective September 19, 2005." The notice indicated that Peter J. Eglick and Jane S. Kiker of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP were withdrawing from their representation of the City of Bothell; and Peter J. Eglick and Jane S. Kiker of Eglick, Kiker and Whited PLLC would be substitute counsel for the City of Bothell in this matter.

On October 17, 2005, the Board received "Notice of Withdrawal and Substitution of Attorney" from Petitioner's attorney. The notice indicated that G. Richard Hill, of McCullough, Hill, Fikso, Kretschmer, Smith & Dixon withdrew from representation of Gateway Office LLC; and G. Richard Hill of McCullough, Hill PS would be substitute counsel for Gateway Office LLC in this matter. No effective date was specified nor indicted on the notice.

On October 24, 2005, the deadline for filing Petitioner Gateway Office LLC's prehearing brief, the Board did not receive Petitioner's prehearing brief or any other filings or requests.

On October 27, 2005, the Board received "Notice of Withdrawal and Substitution of Attorney" from Petitioner's attorney. The notice indicated that G. Richard Hill of McCullough, Hill PS was withdrawing from representation of Gateway Office LLC; and James C. Hanken of Law Offices of James C. Hanken, would be substitute counsel for Gateway Office LLC in this matter. The effective date of the withdrawal and substitution was indicated as October 20, 2005.

II. DISCUSSION

The Board is empowered to extend the time for issuing its decision if the parties file a *timely* request for additional time to permit them to pursue negotiations allowing them to settle or resolve the dispute. RCW 36.70A.300(2)(b).

In this matter, the Board has thrice granted settlement extensions to the parties to resolve their dispute. As is customary, as part of the Order granting the latest settlement extension, the Board provided a revised "Final Schedule" [Appendix A] that adjusted the deadlines for the filing of prehearing briefs, the hearing on the merits and due date of the Final Decision and Order. *See* 3rd Extension, Appendix A, at 3. The revised final schedule in the 3rd Extension required that Petitioner file a prehearing brief (with exhibits) by 4:00 p.m. October 24, 2005.

October 24, 2005 has come and gone. As of the date of this Order, the Board has not received a prehearing brief from Petitioner. Nor has the Board received a timely request for an additional settlement extension. Consequently, the Board will dismiss this matter for lack of prosecution – all issues have been abandoned. Dismissal is required since Petitioner Gateway Office LLC has failed to pursue its case and failed to comply with the schedule set forth in the Board's 3rd Extension Order.

The Board finds and concludes:

1. The original date for Gateway's PHB, in the segregated case, was June 6, 2005. *See* Order Segregating Gateway Office LLC Petition for Review [CPSGMHB Case No. 05-3-0024] from the Consolidated Case and Granting 30-day Settlement Extension, April 5, 2005, Appendix A, at 4.
2. The parties filed a *timely* stipulation requesting a second settlement extension on June 3, 2005. *See* Order Granting a Second 60-day Settlement Extension, (Jun. 7, 2005), at 1-2
3. The Board orally notified the parties that the extension would be granted and the Board issued the Order granting the 2nd Extension on June 7, 2005. *Id*. at 2.
4. The Final Schedule, as revised, in the 2nd Extension set August 15, 2005 as the deadline for Gateway's PHB. *Id*. Appendix A, at 3.
5. The parties filed a *timely* request for a third settlement extension on August 9, 2005. *See* Order Granting Third Settlement Extension [60 days], (Aug. 11, 2005), at 1.
6. The Board issued its Order granting the 3rd Extension on August 11, 2005. *Id*. at 2.
7. The Final Schedule, as revised, in the 3rd Extension set October 24, 2005 as the deadline for Gateway's PHB. *Id*. Appendix A, at 3.
8. On October 24, 2005 the Board did not receive Gateway's prehearing brief with exhibits or a stipulated request from the parties seeking an additional settlement extension.
9. Until October 20, 2005, the same attorneys represented the parties even though their professional affiliations had changed. *See* Notices of Withdrawal and Substitution, *supra*, at 2.
10. The parties have has three settlement extensions – 150 days – to resolve their dispute. *See* findings 1-8, *supra*.
11. Gateway Offices LLC has failed to prosecute or pursue its case in accordance with the deadlines established in the Board's 3rd Extension Order.
12. Pursuant to WAC 242-02-570(1) and 720(4),[2] the Board dismisses this matter.

III. ORDER

Having considered the PFR, the three settlement extensions, the failure to file either a timely prehearing brief or a timely agreed upon settlement extension request, the Board's prior Orders and the GMA, the Board's rules, the Board **ORDERS:**

- The matter of *Gateway Office LLC v. City of Bothell*, CPSGMHB Case No. 05-3-0024 is **dismissed with prejudice**.

- All scheduled hearings are **cancelled** and this matter is **closed**.

[2] WAC 242-02-570(1) provides, "Failure by . . . a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-02-720 provides, "Any action may be dismissed by a board: . . . (4) Upon a board's own motion for failure of the parties to comply with these rules or any order of the board."

So ORDERED this 3rd day of November, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP
Board Member

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Edward G. McGuire, AICP
Board Member

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Margaret A. Pageler
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.[3]

[3] 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's offices. RCW 34.05.010(6), WAC 242-02-040, WAC 242-02-330. 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).