

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 CLARK COUNTY NATURAL RESOURCES  
4 COUNCIL,

5 Petitioner,

6 Case No. 05-2-0005

7 v.

8 **ORDER DISMISSING PETITION**  
9 **FOR REVIEW**

10 CITY OF BATTLE GROUND,

11 Respondent.

12  
13 THIS Matter comes before the Board upon the joint submission of a proposed order of  
14 dismissal.<sup>1</sup> This case was scheduled for a hearing on the merits on December 4, 2006 and  
15 no briefing has been filed by either party due to settlement between the parties.  
16

17 **PROCEDURAL BACKGROUND**

18 The parties in this case have filed seven motions for extension to achieve settlement.<sup>2</sup> In  
19 their motion of June 19, 2006, the parties represented that the settlement anticipated that  
20 the City would adopt certain amendments negotiated as the settlement of the claims in this  
21 case on October 20, 2006.<sup>3</sup> Based upon that request, the Board issued the Seventh Order  
22 Granting Extension to Achieve Settlement on June 30, 2006. This order established a new  
23 schedule for briefing and hearing of the petition for review:  
24

25 **Case No. 05-2-0005**

26 October 27, 2006	Deadline for Petitioner's Prehearing Brief (with exhibits)
27 November 6, 2006	Deadline for Respondent's Prehearing Brief (with exhibits)

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31 <sup>1</sup> Final Order Re: Settlement signed by attorneys for CCNRC and the City of Battle Ground.

32 <sup>2</sup> Seventh Order Granting Extension to Achieve Settlement, June 30, 2006.

<sup>3</sup> CCNRC's Final Motion for Order of Continuance and Declaration of John S. Karpinski in Support of Motion To Implement Settlement Agreement, June 19, 2006.

1 2 3 4	November 9, 2006 (9:30 a.m.)	<b>Hearing on Merits of Petition</b> Battle Ground City Council Chambers City Hall, 109 SW First Street, Battle Ground
5 6 7 8 9 10 11 12	December 4, 2006	<b>Final Decision and Order Deadline</b>

Neither party submitted any briefing in this case but a proposed Final Order Re: Settlement was filed with the Board on November 13, 2006. This proposed order includes a copy of Battle Ground Ordinance No. 06-016 adopted September 18, 2006 to settle the challenges to the City's Critical Areas Ordinances.

### DISCUSSION

The Board may dismiss a petition for review:

- (1) When all parties stipulate;
- (2) Upon motion of the petitioner or respondent prior to the presentation of the respondent's case;
- (3) Upon motion by the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or
- (4) Upon a board's own motion for failure by the parties to comply with these rules or any order of the board.

WAC 242-02-720.

While the procedure followed by the parties in this case is not ideal, the proposed Final Order Re: Settlement is signed by the parties and indicates that they have reached settlement and jointly request dismissal. The basis for dismissal in WAC 242-02-720(1) anticipates dismissal when the parties stipulate to it. Further, the parties failed to follow the schedule established by the Board for briefing and hearing in this case by failing to submit briefs, appear for hearing or submit their stipulation for dismissal until after the date for briefing and hearing had passed. WAC 242-02-720(4) allows the Board to dismiss the petition where the parties have failed to comply with any order of the Board. Therefore, two conditions for dismissal of the petition for review are met here.

1 **ORDER**

2 Based on the foregoing, the Petition for Review in this case is hereby DISMISSED and this  
3 case is CLOSED.

4  
5 ENTERED this 1<sup>st</sup> day of December 2006.  
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8 \_\_\_\_\_  
9 Margery Hite

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11 \_\_\_\_\_  
12 Holly Gadbow

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14 \_\_\_\_\_  
15 James McNamara  
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17 Pursuant to RCW 36.70A.300 this is a final order of the Board.

18 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date  
19 of mailing of this Order to file a petition for reconsideration. The original and three  
20 copies of a motion for reconsideration, together with any argument in support  
21 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the  
22 original and three copies of the motion for reconsideration directly to the Board, with  
23 a copy to all other parties of record. **Filing means actual receipt of the document at**  
24 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing  
25 of a motion for reconsideration is not a prerequisite for filing a petition for judicial  
26 review.  
27

28  
29 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
30 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
31 judicial review may be instituted by filing a petition in superior court according to the  
32 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

1 Enforcement. The petition for judicial review of this Order shall be filed with the  
2 appropriate court and served on the Board, the Office of the Attorney General, and all  
3 parties within thirty days after service of the final order, as provided in RCW  
4 34.05.542. Service on the Board may be accomplished in person or by mail, but  
5 service on the Board means actual receipt of the document at the Board office within  
6 thirty days after service of the final order. A petition for judicial review may not be  
7 served on the Board by fax or by electronic mail.  
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9 Service. This Order was served on you the day it was deposited in the United States  
10 mail. RCW 34.05.010(19)  
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