

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

MICHAEL GAWENKA, HELEN)	
MILLER, PAUL SCHEYER, and)	Case No. 00-3-0011
JOANNE and DAVID FORBES,)	<i>(Gawenka)</i>
)	
Petitioners,)	ORDER ON DISPOSITIVE MOTION
)	
v.)	
)	
CITY OF BREMERTON,)	
)	
Respondent.)	
)	
)	
)	

I. Procedural Background

On July 20, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Michael Gawenka, Helen Miller, Paul Scheyer and Joanne and David Forbes (**Petitioner or Gawenka**). The matter was assigned Case No. 00-3-0011, and is hereafter referred to as ***Gawenka v. Bremerton*** (short case name, “Gawenka”). Petitioners challenge the Bremerton Annual Comprehensive Plan Amendment and Rezones 99-0001 – Specifically the Rezone portion dealing with Weslon Place PL99-0011. The grounds for the challenge is noncompliance with various sections of the Growth Management Act (**GMA or the Act**). In addition, Petitioners allege there has been a violation of WAC 197-11-340(2)b, c and d, and a violation of Bremerton SMP (Shoreline Management Policy) 7-5-3(b).

On August 1, 2000 the Board received a “Notice of Appearance” from David B. St.Pierre, Assistant City Attorney of Bremerton.

On August 15, 2000 the Respondent filed a Motion for Settlement Extension with the Board and requested that this matter be heard during the previously scheduled Prehearing Conference.

On August 17, 2000 beginning at 10:00a.m., the Board conducted a Prehearing Conference in room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Edward G. McGuire and Lois H. North, presiding officer. Petitioners Helen Miller and Paul

Scheyer appeared *pro se*. Representing the City of Bremerton was David St.Pierre. The Motion for Settlement Extension and the Tentative Schedule for the case were discussed at length. Petitioners Miller and Scheyer and attorney David St.Pierre all signed a Stipulated Agreement for a Settlement Extension for thirty days.

On August 31, 2000, Respondent David B. St.Pierre filed for the City of Bremerton a Dispositive Motion to Dismiss CPSGMHB Case No. 00-3-0011. The Respondent requested that the Hearings Board dismiss with prejudice the above captioned matter because the appeal is moot.

II. FINDINGS OF FACT

1. Petitioners appealed an action by the City of Bremerton amending the City of Bremerton's Comprehensive Plan to reclassify an area of the City of Bremerton which the Petitioners refer to as the "Weslon Place Rezone".
2. On May 17, 2000, the City Council of Bremerton adopted Ordinance No. 4708 adopting the Roger and Jennifer Nance Comprehensive Plan amendment application for the "Nance-Kitsap Way/Weslon Place" rezone to change a portion of the Comprehensive Plan and Map from "Low Density Residential" (LDR) to "General Business" (GB).
3. Also on May 17, 2000, the City Council of Bremerton adopted Ordinance 4710 adopting a change in the same portion of the Official Zoning Map from "Single Family Residential" (SF-3) to "General Business" (GB) in order for the zoning map to conform to and implement the Comprehensive Plan.
4. On August 11, 2000, the City of Bremerton issued public notice of a public hearing and first reading on August 23, 2000, and second public hearing and second reading on August 30, 2000, for final adoption of an Ordinance that would repeal Ordinances 4708 and 4710 in their entirety.
5. With anticipation that the "Weslon Place Rezone" Ordinances would be repealed, Respondents submitted a Motion for Settlement Extension on August 15, 2000, requesting a continuation of these proceedings until September 2000 in order to allow the Bremerton City Council the time needed to repeal the "Weslon Place Rezone" by August 30, 2000. That motion was superceded when Petitioners and Respondent jointly submitted a Stipulated Agreed Motion for Settlement Extension for 30 Days during the Prehearing Conference on August 17, 2000. On August 18, 2000, the Hearings Board granted the 30 day Settlement Extension.
6. The Petitioner in this case had until October 5, 2000 to respond to the City's Dispositive Motion. The Board has heard nothing from the Petitioners as of this date, October 9, 2000.

III. DISCUSSION

On August 30, 2000, the Bremerton City Council adopted Ordinance No. 4720 (certified copy filed with Dispositive Motion). Ordinance No. 4720 repealed, in their entirety, the "Weslon Place Rezone" Ordinance Nos. 4708 and 4710. The repeal of the "Weslon Place Rezone" Ordinances renders the Petitioner's appeal moot because there is no currently effective legislative action to challenge. *Morris, et al v. City of Lake Forest Park*, CPSGMHB Case No. 97-3-0029c, ORDER OF DISMISSAL (2/26/98). This Hearings Board does not hear and decide moot issues. *Martin P. Hayes v. Kitsap County*, CPSGMHB Case No. 95-3-0081c, ORDER (4/23/96).

IV. CONCLUSION

For the reasons cited above, the Board **dismisses with prejudice** the above captioned matter as moot.

V. ORDER

Based upon review of the Petition for Review, the Stipulated Agreed Motion for Settlement Extension for 30 Days, the Dispositive Motion to Dismiss, and having deliberated on the matter, the Board **ORDERS**:

The Respondent's Motion to Dismiss CPSGMHB Case No. 00-3-0011 (*Gawenka v. Bremerton*) is **granted**. CPSGMHB Case No. 00-3-0011 is **dismissed with prejudice** [\[1\]](#).

SO ORDERED this 10th day of October, 2000.

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

[\[1\]](#) “Dismiss with prejudice” means a removal from the docket in such a way that the plaintiff (Petitioner) is foreclosed from filing a suit again on the same claim or claims. Black’s Law Dictionary, 7th ed. at 482. Essentially, to dismiss with prejudice means that a later claim must arise from a new event that can be differentiated from the original claim. Within the context of a petition before a Growth Management Hearings Board, a new “claim” may arise from any new “action” by State, County, or City (RCW 36.70A.280). For example, the enactment of a Comprehensive Plan or Plan amendment would constitute a new action within the Board’s jurisdiction to review.