CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

SALISH VILLAGE HOMEOWNERS ASSOCIATION,	)	**Case No. 02-3-0022**
Petitioner,	)	***(Salish Village)***
v.	)	
CITY OF KIRKLAND,	)	**ORDER OF DISMISSAL**
Respondent.	)	

I. Procedural history

On December 16, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Salish Village Homeowners Association (**Petitioner** or **Salish Village**). The matter was assigned Case No. 02-3-0022, and is hereafter referred to as *Salish Village v. City of Kirkland*. Board member Edward G. McGuire served as the Presiding Officer (**PO**) for this matter. Petitioner challenged the City of Kirkland's (**City** or **Kirkland**) adoption of Ordinance No. 3862 amending the text of the City's Zoning Code and Zoning Map. The basis for the challenge was noncompliance with the Growth Management Act (**GMA or Act**) and the State Environmental Policy Act (**SEPA**).

On December 19, 2002, the Board issued a "Notice of Hearing"[1] (**NOH**) in the above-captioned case. The Order set a date for a prehearing conference (**PHC**)[2] and established a tentative schedule for the case.

On January 27, 2003 the Board held the PHC. At the PHC, on behalf of Petitioner, Mr. Klauser indicated that the Issues stated in the PFR were based on those presented to the Superior Court[3] and were not necessarily limited to issues involving compliance with the GMA. Mr. Klauser was given until noon, February 3, 2003, to winnow down and/or restate the issues presented as questions for Board review. Any clarified or restated issues were to be based on those stated in the PFR. The PO indicated that absent Petitioner's filing a restatement of the issues, those stated

in the PFR would be reflected in the Prehearing Order (**PHO**), and would be the issues the Board addresses.

On February 3, 2003, in lieu of a clarification or restatement of the issues, the Board received a "Petition for Declaratory Ruling" (**PDR**) from Petitioner. In the PDR, Petitioner stated "This motion is brought to resolve "threshold" questions of the Board's jurisdiction and the formulation of Salish's "Issues Presented." PDR, at 4.

On February 4, 2003, the Board issued its "Prehearing Order" (**PHO**) establishing the final schedule for the petition for review and setting forth the Legal Issues to be decided by the Board. The Legal Issues stated in the PHO were identical to the "Issues Presented" in Petitioner's PFR. The schedule included deadlines for filing Motions to Supplement the Record and for filing Dispositive Motions.

Also on February 4, 2003, the Board issued an "Order Declining to Issue a Declaratory Ruling." This Order noted that the "threshold" question posed by Petitioner was inappropriate for the Board to address in the context of a declaratory ruling. However, the Order noted that, "If Petitioner wishes to move and argue that the Board does not have subject matter jurisdiction over the challenged action [Kirkland's adoption of Ordinance No. 3862] Petitioner may do so within the timeframes set forth in [this] PHO (prehearing order). *Salish Village v. City of Kirkland*, CPSGMHB Case No. 03-3-0001pdr, Order Declining to Issue Declaratory Ruling, (Feb. 4, 2003), at 2. This Order disposed of the PDR.

On February 28, 2003, the deadline for filing motions, the Board received "City of Kirkland's Dispositive Motion." The City sought to dismiss certain Legal Issues from the proceeding. The Board did not receive a dispositive motion from Petitioner regarding the Board's jurisdiction.

On March 7, 2003, the Board received "Petitioner Salish Village's Response to Kirkland's Dispositive Motions." The City did not reply to the Petitioner's Response.

The Board did not hold a hearing on the motion.

On March 19, 2003, the Board issued its "Order Granting Dispositive Motion," which granted the City's motion and dismissed certain Legal Issues from the proceeding. The Order also granted the parties permission to include additional dispositive motions in their prehearing briefing.[4]

On April 8, 2003, the Board received "Motion for Voluntary Dismissal (WAC 242-02-720)" from Petitioner. The Motion states, "Comes now the Petitioner, Salish Village Home Owners Association and moves the Board, pursuant to WAC 242-02-720(2)[5] for a voluntary dismissal of this appeal." The motion is signed by Petitioners' attorney James J. Klauser.

II. ORDER

Based upon review of the Petitioner's Motion and the Board's Rules of Practice and Procedure (Chapter 242-02 WAC), the Board enters the following ORDER:

> The Board **grants** Petitioner's motion for voluntary dismissal and thus enters an ORDER OF DISMISSAL. The hearing on the merits is cancelled. The matter of *Salish Village Homeowners Association v. City of Kirkland*, CPSGMHB Case No. 02-3-0022 is **dismissed with prejudice**.

So ORDERED this 10th day of April 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Edward G. McGuire, AICP
Board Member

_____
Lois H. North
Board Member

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[1] In the NOH, Board Member Tovar recused himself, withdrawing from any participation in this matter.

[2] On January 14, 2003, due to conflicts the Board issued a "Notice of Revised Prehearing Conference Date" rescheduling the PHC for January 27, 2003.

[3] Petitioner originally filed an action in King County Superior Court challenging the City of Kirkland's action. The Honorable Sharon Armstrong of King County Superior Court, determined that the City's "governmental action is legislative and LUPA does not apply; remaining claims must be directed first to the GMHB." Order on Civil Motions; Cause No. 02-2-29881-8 SEA, December 6, 2002, at 1. See also, Order Granting the City's Motion to Dismiss LUPA Petition and Statutory and Constitutional Writs; and Order and Judgment of Dismissal.

[4] Petitioner Salish Village's prehearing brief was due April 9, 2003.

[5] WAC 242-02-720 provides:

> Any action may be dismissed by a board:
>
> (1) When all parties stipulate;
>
> (2) Upon motion of the petitioner or respondent prior to the presentation of the respondent's case;
>
> (3) Upon a 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 the board's own motion for failure by the parties to comply with these rules or any order by the board.