CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

MARVIN PALMER D/B/A KINGSBURY WEST MOBILE HOME PARK,	)	**Case No. 03-3-0001**
	)	***(Palmer, et al.)***
Petitioner,	)	
v.	)	**ORDER ON MOTIONS**
CITY OF LYNNWOOD,	)	
Respondent.	)	

I. PROCEDURAL HISTORY

A. General

On January 17, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Marvin Palmer (**Petitioner** or **Palmer**). The matter was assigned Case No. 03-3-0001, and is hereafter referred to as *Palmer et al. v. City of Lynnwood*. Petitioner challenges the City of Lynnwood's (**Lynnwood** or **the City**) adoption of Ordinance Nos. 2432 and 2433. Ordinance No. 2432 adopted the City's 2002 Comprehensive Plan Amendments. Ordinance No. 2433 changed the zoning designation of Kingsbury West Annex, which Mr. Palmer owns, from RMM to RML. The basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**).

The Board held a prehearing conference on February 18, 2003 at the Financial Center, 1215 4th Avenue in Seattle, WA. Presiding Officer Lois H. North conducted the prehearing conference. Board member Ed McGuire also attended. Walter H. Olsen, Jr. represented the Petitioner and Greg A. Rubstello represented the Respondent. Also, in attendance was Jeff Palmer, son of the Petitioner and manager of the property in question.

The City of Lynnwood filed the Respondent's Index with the Board at the prehearing conference.

On February 21, 2003, the Board issued a Prehearing Order. The Prehearing Order set forth the Legal Issues for the Board to decide and established the final schedule for motions, briefing, and the Hearing on the Merits.

B. Motions to Dismiss

On February 13, 2003, the Board received Respondent City of Lynnwood's "Motion to Dismiss for Lack of Jurisdiction and Motion for Order of Default."

On March 3, 2003, the Board received Petitioner's "Motion to Dismiss Petition for Review of Claims Brought in *Palmer v. City of Lynnwood, Snohomish County Superior Court Cause No. 02-2-01681-1*."

On March 10, 2003, the Board received "Respondent City of Lynnwood's Response to Petitioner's Motion to Dismiss and Motion to Supplement the Record."

On March 13, 2003, the Board received "Petitioner's Response to City's Motion to Dismiss Petition."

On March 18, 2003, the Board received "Respondent City of Lynnwood's Reply to Petitioner's Response to City's Motion to Dismiss for Lack of Jurisdiction."

On March 18, 2003, the Board received "Petitioner's Reply to City's Response to Petitioner's Motion to Dismiss Board's Review of Claims Brought in Lawsuit."

C. Motions to Supplement

On March 3, 2003, the Board received Petitioner's "Motion to Supplement Record." The Petitioner attached Exhibits A though I.

On March 10, 2003, the Board received "Respondent City of Lynnwood's Response to Petitioner's Motion to Dismiss and Motion to Supplement the Record." The Respondent stated, "Without waiver of its objection to the Board's jurisdiction, the City does not object to supplementation of the record as requested by the Petitioner's Motion to Supplement the Record." City's Response, at 3.

II. DISCUSSION OF MOTIONS TO DISMISS

A. Position of the Parties

Both parties filed a Motion to Dismiss, for different reasons. The Board first considers the City's Motion.

The City argues:

> The Board does not have jurisdiction to consider the petition filed by Marvin Palmer because the petition was filed 62 days after publication. The challenged ordinance was adopted on November 12, 2002 and a proper summary of the ordinance was published in the City's official newspaper on November 16, 2002. Sixty days after publication was January 15, 2003; this petition was filed on January 17, 2003. The petition should be dismissed.

City's Memorandum of Authorities in Support of Motion to Dismiss, at 3.

The Petitioner replies:

> Petitioner Marvin Palmer ("Palmer") requests that the Board deny the City's Motion to Dismiss because the City itself caused the very untimely filing which it now complains about by ignoring Palmer's request for the publication date, by refusing to provide Palmer with written confirmation of the publication date for the Ordinances which were on the subject of this Petition when requested by Palmer in his counsel's letter dated December 4, 2003, and by providing Palmer with an incorrect publication date when the City was called on January 2, 2003.

Petitioner's Response to City's Motion to Dismiss Petition, at 1.

B. Applicable Law and Discussion

The GMA is very specific as to the legal time frame for filing a Petition for Review with the Board. RCW 36.70A.290(2) provides:

> (2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.
>
> (a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.
>
> (b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

The City published its entire notice of adoption of Ordinance Nos. 2432 and 2433 in the Everett Herald on

November 16, 2002. Attachment 2 and 3, City's Memorandum of Authorities in Support of Motion to Dismiss. The PFR was filed with the Board on January 17, 2003. PFR, at 1. The time that elapsed between the date of publication and the Board's receipt of the PFR was 62 days – clearly outside the 60-day statutory limit.

In a case decided on other grounds, the Supreme Court agreed with a previous GMHB ruling that the Board did not have jurisdiction to decide issues raised by a petition filed outside of the sixty-day limit. *Torrance v. King County*, 136 Wn. 2d 783, 792, 966P.2d 891 (1998).

The Board observes that here the Petitioner knew when the two ordinances were approved by the City Council well in advance of the expiration of the sixty days from the date of publication. Petitioner knew at the time he filed his case in Snohomish County Superior Court that there was also a claim to be made before the Growth Management Hearings Board. The Petitioner decided not to file a petition before the Board. He then reconsidered. Unfortunately, it was too late for Petitioner Palmer to file a timely petition before the Board.

The City has demonstrated that the Board does not have jurisdiction over the matters presented in Petitioner's PFR because it was not filed within the sixty days required by the GMA. Therefore, the City's Motion is **granted** and the matter is **dismissed with prejudice**.

As for the Petitioner's Motion to Dismiss, the Board need not address it, having dismissed the matter on other grounds.

C. Conclusion

The City of Lynnwood has demonstrated that the Board does not have jurisdiction to review this PFR because the Petitioner failed to timely file his appeal. The Board **grants** the City's Motion to **dismiss with prejudice** the case of *Palmer, et al. v. City of Lynnwood*, CPSGMHB Case No. 03-3-0001.

III. DISCUSSION OF SUPPLEMENTAL MOTIONS

Having granted the City of Lynnwood's Motion to Dismiss for lack of Board jurisdiction, **the Board need not, and will not, address Petitioner's Motion to Supplement Index**.

IV. ORDER

Based upon review of the PFR, Motions and supporting briefs and materials submitted by the parties, the Act, Washington case law, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

- City of Lynnwood's Motion to Dismiss for Lack of Jurisdiction and Motion for Order of Default is **granted**.

- CPSGMHB Case No. 03-3-0001, *Palmer, et al. v. City of Lynnwood*, challenging the City's adoption of Ordinance No. 2432 and 2433 is **dismissed with prejudice**.

- The May 15, 2003 hearing on the merits in this matter is hereby **cancelled**.

So ORDERED this 20th day of March, 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP
Board Member

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Lois H. North
Board Member

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Joseph W. Tovar, AICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.