

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

Jocelynn Fallgatter and Jeff Kirkman,	)	
	)	<b>Case No. 05-3-0010c</b>
Petitioners,	)	
	)	<i>(Fallgatter III)</i>
v.	)	
	)	
City of Sultan,	)	<b>ORDER OF DISMISSAL</b>
	)	<b>[Case No. 05-3-0010]</b>
Respondent.	)	
	)	
	)	
	)	

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**I. BACKGROUND**

On January 26, 2005, the Board received a PFR from Petitioners Jocelynn Fallgatter and Jeff Kirkman (**Petitioners**). The matter was assigned Case No. 05-3-0010. Petitioners challenge the City of Sultan's (**City** or **Respondent**) adoption of Ordinance No. 852-04 amending the City's development regulations with respect to the Urban Center Zone. The basis for the challenge is noncompliance with the GMA.

On February 3, 2005, the Board issued its Notice of Hearing and Order of Consolidation. The PFR in Case No. 05-3-0010 was consolidated with a PFR filed January 25, 2005.<sup>1</sup> The two PFRs were consolidated as **CPSGMHB Consolidated Case No. 05-3-0010c**.

On February 24, 2005, the Board issued an Order to Supplement the Record, requiring the City to provide an affidavit of publication of Ordinance No. 852-04 from the City and Petitioners to provide proof of service of the PFR in Case No. 05-3-0010.<sup>2</sup> On February 25, 2005, Jocelynn Fallgatter provided copies of post office receipts documenting mailing of the PFR on January 25, 2005.

On March 3, 2005, the Board conducted the Prehearing Conference in the Board's offices, Suite 2470, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board member Bruce Laing in attendance. Petitioners Jocelynn Fallgatter and Jeff Kirkman were present *pro se* and Thom Graafstra represented Respondent City of Sultan, with Sultan City Administrator/Planner Rick Cesar also in attendance.

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<sup>1</sup> The January 25, 2005, PFR [Case No. 05-3-0080], is Petitioners Jocelynn Fallgatter and Jeff Kirkman's challenge to the City of Sultan's adoption of Ordinance No. 841-04 amending its Comprehensive Plan.

<sup>2</sup> The Board sought to determine whether the PFR had been served by Fax or electronically and perhaps incorrectly logged in the Board's files.

The first item of discussion was consideration of timeliness of the PFR for Case No. 05-3-0010. At the Prehearing Conference, the City delivered an affidavit of publication showing that Ordinance No. 852-04 was published on November 26, 2004. Petitioner Fallgatter acknowledged that the PFR was not faxed or filed electronically but was placed in the mail on January 25, 2005.

## **II. DISCUSSION**

RCW 36.70A.290(2) provides that all petitions to the Board challenging compliance with the GMA “must be filed within sixty days after publication by the legislative bodies of the county or city.” The sixty day deadline is jurisdictional. The Board has no statutory authority to review a city ordinance if the legal issues challenging the ordinance are filed past the 60-day deadline. *See e.g., Montlake Community Club et al. v. City of Seattle*, CPSGMHB No. 99-3-0002c, Order on Dispositive Motions (Apr. 23, 1999).

Having reviewed Petitioners’ date of mailing (January 25, 2005), the date the PFR was received by the Board (January 26, 2005)<sup>3</sup>, and the City’s affidavit of publication of the Ordinance (November 26, 2004), the Board finds that the PFR was filed on the 61<sup>st</sup> day after publication of notice of adoption of Ordinance No. 852-04. The Board concludes that the PFR was untimely. Case No. 05-3-0010 is therefore **dismissed**.

**Based on the GMA, Board rules, the Notice of Hearing, submittals by the parties, and discussions at the prehearing conference, the Board enters the following Order:**

## **III. ORDER OF DISMISSAL OF CASE NO. 05-3-0010**

The Board having found that the Petition for Review challenging Ordinance 852-04 was untimely filed, Case No. 05-3-0010 is **dismissed**.

So ORDERED this 8th day of March 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Margaret Pageler, Presiding Officer  
Board Member

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, AICP  
Board Member

<sup>3</sup> WAC 242-02-240(1): “The date of filing shall be the date of actual receipt by a board at its office. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.”