

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

MARION L. FORD WEBER,)	
)	
Petitioner,)	No. 98-2-0003
)	
vs.)	ORDER OF
)	DISMISSAL
TOWN OF FRIDAY HARBOR,)	
)	
Respondent.)	
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On February 24, 1998, we received a petition for review from Ms. Weber. The petition challenged the comprehensive plan and development regulations adopted by the Town of Friday Harbor on December 18, 1997. Notice of the adoption was published on December 24, 1997.

On March 18, 1998, we received a motion for dismissal of the petition. The Town of Friday Harbor pointed out that the 60-day period for filing petitions challenging the December 18, 1997, action and the December 24, 1997, publication was Sunday, February 22, 1998. Therefore, the last date for filing this petition in this case was Monday, February 23, 1998, RCW 36.70A.290. We received a response from Ms. Weber on March 26, 1998, and a telephonic hearing was held April 15, 1998.

Petitioner contended that the provisions of WAC 242-02-240(1) which defines the date of filing as the date of “actual receipt by a Board at its office” did not apply. First, petitioner contended that adoption of such a rule must, under the case of *State v. Wittenbarger*, 124 W2d 467 (1994), be “authorized and consistent with the statute.”

The Growth Management Act (GMA, Act) does not specifically define the “date of filing.” It does, however, establish a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. This timeframe is an integral part of the GMA because of the necessity of finality and predictability in local governments’ land use planning efforts. Because the Legislature has directed that a deadline for filing petitions exists, it is within the purview of the Joint Boards to adopt a regulation defining the actual receipt of a petition as the establishment of

the date of filing. This rule was adopted as one of our first, effective October 15, 1992. The date of filing definition has not changed since it was adopted.

Because the requirement for filing within 60 days of publication is specifically part of the GMA, this case is distinguishable from those cases in which we have declined to dismiss for failure to serve a local government at the time of filing of a petition. As we pointed out in those case, the GMA does not speak to *any* requirement that service on a local government is necessary.

Petitioner also contended that substantial compliance was shown by petitioner's service on the Town on February 23, 1998, and then sending the original to our office by Federal Express that same day. Petitioner pointed out that she had called our office and had been told that it was not necessary to hire or to be an attorney to file a petition or to appear before us. Thus, she concluded, dismissal was not appropriate under these facts.

It is true that Ms. Weber contacted our office during January, 1998. It is also true that she was told that it was not necessary to be a lawyer or to be represented by one to appear before us. She was, however, never told that a different standard for adhering to the rules of procedures would be applied. More significantly, as is our general practice, Ms. Weber was sent a "kit" which included our brochure, a copy of the Act and a copy of WAC 242-02. The cover letter, dated January 12, 1998, stated in part that:

"You may file a petition in person, by fax, or through the mail. The important thing to remember is it must be *received at our office* by the 60th day after publication of the action you are challenging...." (Italics supplied).

The petition in this case is dismissed because of its failure to be received in our office within 60 days of the date of publication.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 16th of April, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member