

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3  
4 KIPP DUNLAP,

5  
6 Petitioner,

7 v.

8 CITY OF NOOKSACK,

9 Respondent.

CASE NO. 05-2-0001

**ORDER OF DISMISSAL**

10  
11  
12 This matter comes before the Board on a Stipulation and Order of Dismissal, signed by Kipp  
13 Dunlap, Petitioner, and Thomas Fryer, Esq. for the City of Nooksack. Stipulation and Order  
14 of Dismissal (May 19, 2005). This matter first came before the Board on January 18, 2005,  
15 with the filing of a Petition for Review challenging the City's update of its comprehensive  
16 plan (Ordinance #584). A prehearing conference was held on February 17, 2005.

17 Proposed supplements to the index were filed by Mr. Dunlap. Petitioner also refined his  
18 issues statement and submitted it to the Board. At a telephonic conference of all parties,  
19 including the Nooksack city planner, an interest was expressed by Petitioner in mediating  
20 the issues in dispute. After a settlement officer was secured each party requested a 90-day  
21 extension of the proceedings. On April 19, 2005, an Order of the Board was issued granting  
22 a 90-day extension of the Final Decision and Order deadline for purposes of pursuing  
23 settlement.

24 In the Stipulation and Order of Dismissal submitted to the Board on May 19, 2005, the  
25 parties stipulated and agreed as follows:  
26

- 27  
28  
29  
30 1. The parties have engaged in a mediation process offered by the Presiding Officer in  
31 the above entitled matter, and said mediation having been conducted, by Mr. Dennis  
32 Dellwo, a member of the Eastern Washington Growth Management Hearings Board;

- 1 2. All proceedings herein shall be dismissed without prejudice. In consideration of said  
2 dismissal of this action, the City agrees to do as follows:
- 3 a. Adopt an updated Critical Areas Ordinance ("CAO") within the timeframe  
4 required by law. As part of its review and update of the City's CAO, the City  
5 will review and consider Whatcom County's proposed amendments to the  
6 Whatcom County Critical Areas Ordinance related to existing and ongoing  
7 agricultural activities, as they may relate to critical areas as contained in the  
8 proposed Appendix A "Conservation Program on Agricultural Lands" attached  
9 to the Whatcom County draft Amended Critical Areas Ordinance.
- 10  
11
- 12 b. Petitioner may, upon his election, and in connection with his real property,  
13 located within the City of Nooksack currently zoned agricultural as defined by  
14 Nooksack Municipal Code, Section 19.20, file for a Comprehensive Plan  
15 Amendment and re-zone as set forth in Nooksack Municipal Code, Section  
16 19.04.040. The fees associated with said Comprehensive Plan Amendment  
17 and rezone as set forth in Nooksack Municipal Code, Section 16.01.085 shall  
18 be waived.
- 19
- 20 c. Upon receipt of a complete Comprehensive Plan Amendment application, as  
21 contemplated in sub-part "b" above, the City of Nooksack agrees to place a  
22 moratorium upon the collection of vehicle weight exemption fees as set forth in  
23 Nooksack Municipal Code, Section 10.12.035. Said moratorium shall continue  
24 until the City Council of the City of Nooksack takes action upon the Petitioner's  
25 Comprehensive Plan Amendment application, or December 31, 2005,  
26 whichever shall happen first.
- 27  
28
- 29
- 30 3. The Petitioner reserves the right to re-file the above captioned action should the  
31 Respondent fail to act in the manner described above. Further, in reference to sub-  
32 part "a" of the this agreement, the Petitioner shall have the right to challenge said

1 Amended CAO as allowed by the Growth Management Act, within the timeframes  
2 provided and required by law.

3  
4 The parties have come to an accommodation and settlement. Both parties agree the matter  
5 before the Board should be dismissed. Under the terms of WAC 242-02-720(1), any matter  
6 may be dismissed by the Board when all parties stipulate.

7  
8  
9 **ORDER**

10 Based on the stipulation and agreed order signed by both parties, Case No. 05-2-0001 is  
11 DISMISSED

12  
13 Done this 31st day of May 2005.

14  
15  
16 \_\_\_\_\_  
17 Gayle Rothrock, Board Member

18  
19  
20 \_\_\_\_\_  
21 Holly Gadbow, Board Member

22 I concur in the dismissal of the petition. I would also note that, despite the lengthy recitation  
23 of the terms of the settlement between the parties, the Board is neither approving the  
24 settlement nor agreeing to enforce its terms.

25 \_\_\_\_\_  
26 Margery Hite, Board Member