

Bond Case Briefs

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Kenmore MHP LLC v. City of Kenmore

Court of Appeals of Washington, Division 2 - February 8, 2022 - P.3d - 2022 WL 365736

Petitioner filed petition for judicial review of decision of Growth Management Hearings Board, determining that petitioner's service of its petition for review of a city ordinance on city after filing petition with the Board deprived Board of jurisdiction and did not substantially comply with service requirements, and summarily denying petitioner's request to amend its petition to add legal authorities.

The Superior Court reversed and remanded to the board. City appealed.

In a case of apparent first impression, the Court of Appeals held that:

- Court of Appeals would defer to Board's interpretation of "substantially comply" in service requirement of regulation governing petitions for review;
- Petitioner did not substantially comply with service requirement of regulation governing petitions for review, under the Board's interpretation of substantial compliance;
- Board's dismissal of petition did not conflict with regulation providing that Board would rarely entertain a motion for summary judgment except in a case of failure to act by a statutory deadline; and
- Board's dismissal of petition was not arbitrary and capricious.

Court of Appeals would defer to Growth Management Hearings Board's interpretation of "substantially comply" in service requirement of regulation governing petitions for review, i.e., that for a party to substantially comply with a service rule, (a) the party that had to be served personally received actual notice, (b) the defendant would suffer no prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve properly, and (d) the plaintiff would be severely prejudiced if his complaint were dismissed, which it adopted from test used under the federal rules of civil procedure; term was ambiguous, and definition was plausible, related to a service rule, was consistent with statutory language of the Growth Management Act, and had not been overturned.

Petitioner had no justifiable excuse for serving its petition for review of a city ordinance on city after filing petition with the Growth Management Hearings Board, and thus, it did not "substantially comply" with service requirement of regulation governing petitions for review, under the Board's interpretation of substantial compliance; petitioner gave petition to a messenger on the Friday afternoon before the statutory deadline and the messenger was unable to reach the City for service that day.

Growth Management Hearings Board's dismissal of petition for review of a city ordinance due to petitioner's service of petition on city after filing petition with the Board, even though petitioner complied with statute of limitations, did not conflict with regulation providing that Board would rarely entertain a motion for summary judgment except in a case of failure to act by a statutory deadline; regulation did not place any mandate on Board, as "rarely" did not mean "never."

Growth Management Hearings Board's dismissal of petition for review of a city ordinance due to petitioner's service of petition on city after filing petition with the Board was not arbitrary and capricious, in violation of the state Administrative Procedure Act (APA); Board examined the record and applied a legal test it adopted from the federal courts for determining substantial compliance with a service requirement, and applying that test to the facts, Board determined that petitioner did not substantially comply with its service requirement because it failed one element of the test: a justifiable excuse.