

Bond Case Briefs

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Kenmore MHP LLC v. City of Kenmore

Supreme Court of Washington, En Banc - May 4, 2023 - P.3d - 2023 WL 3238559

Property owner sought judicial review of decision of Growth Management Hearings Board that granted city's motion for summary judgment and dismissed property owner's petition for review challenging city land-use ordinance, based on determination that property owner did not substantially comply with service requirements.

The Superior Court reversed and remanded to Board. City appealed. The Court of Appeals reversed the Superior Court and upheld the Board's decision. Property owner filed petition for review, which was granted.

The Supreme Court held that:

- Property owner substantially complied with service requirements, and
- Board's failure to correctly apply test for substantial compliance and failure to consider prejudice as a factor was arbitrary and capricious in violation of Washington's Administrative Procedure Act (APA).

Petitioner substantially complied with service requirements under regulation governing petitions for review before the Growth Management Hearings Board relating to whether or not an adopted comprehensive plan was in compliance with the goals of the Growth Management Act, even though petitioner was not in actual compliance when it served city after the date it filed petition with Board; city was in the same position it would have been had petitioner actually complied with the order of service, and city did not claim that it was prejudiced.

Growth Management Hearings Board's dismissal of petition for review based on petitioner's alleged failure to substantially comply with regulatory service requirements by serving city after filing petition with Board was arbitrary and capricious in violation of Washington's Administrative Procedure Act (APA); Board failed to correctly apply test for substantial compliance with service requirement when it did not consider prejudice to city as a factor.