

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

GEORGIANA AND)	
RICHARD J. MURRAY,)	
)	
Petitioners,)	CRGC No. C98-0010-K-G-11
)	
vs.)	
)	ORDER DISMISSING APPEAL
EXECUTIVE DIRECTOR,)	
)	
Respondent,)	
)	
and)	
)	
FRIENDS OF THE COLUMBIA)	
GORGE,)	
)	
Intervenor-Respondent.)	
_____)	

It appearing to the Columbia River Gorge Commission ("Commission") that this matter is moot, this appeal is hereby **DISMISSED**.

It further appearing to the Commission that Petitioners have failed to prosecute the appeal, this appeal is hereby **DISMISSED**.

Facts

1. Petitioners filed this appeal on September 3, 1998. Petitioners are pro se.
2. On November 4, 1998, Petitioners filed a document entitled "Brief," which appeared to be Petitioner's Request for Review, pursuant to Commission Rule 350-70-090.

3. On November 5, 1998, the Commission informed Petitioners that their brief failed to conform to the requirements of Commission Rule 350-70-090 and granted a two-week extension to file a conforming Request for Review.

4. Petitioners filed a Request for Review on November 20, 1998, which argued, in part, that the Executive Director's decision (the decision being appealed) effected a "taking." Petitioners failed to comply with Commission Rule 350-70-060, which requires that Petitioners file a "Special Request for Review" when making a "taking" claim.

5. On November 25, 1998, the Executive Director filed a Motion to Dismiss for various reasons. On December 3, 1998, the Commission established a schedule for responsive briefing regarding the Motion to Dismiss. All parties briefed the issues. On March 22, 1999, the Commission ordered that the appeal would proceed and the issues be addressed during the course of the proceedings.

6. On April 21, 1999, the Commission granted a motion by the Executive Director to extend the time to file the Special Request for Review and to stay the briefing schedule.

7. On May 12, 1999, Petitioners filed a Special Request for Review. On June 11, 1999, the Executive Director denied the Special request for Review.

8. No party ever sought to lift the stay of briefing. On April 18, 2000, the Commission, *sua sponte*, lifted the stay of the briefing schedule.

9. On May 22, 2000, the Commission issued a Notice of Hearing for Oral Argument to be held on June 13, 2000. The Commission further ordered

the parties to prepare a pre-hearing order, due June 8, 2000, pursuant to Commission Rule 350-70-130.

10. On June 6, 2000, the Chair of the Commission held a prehearing conference by telephone. On June 8, 2000, the Executive Director and Friends of the Columbia Gorge signed the pre-hearing order, but Petitioners refused. On June 8, 2000, Petitioners faxed a letter to the Executive Director refusing to sign the prehearing order for several reasons, and requested a postponement of the matter until the Commission "schedules a recorded special hearing to learn about the CRGC's violation of the NSA as it particularly concerns Falcon Cable Company * * *"

11. On June 9, 2000, all parties jointly moved to postpone the hearing. In the motion, Petitioners stated that they would be able to agree to the prehearing order on June 12, 2000, but that would not allow the Executive Director or Friends of the Columbia Gorge adequate time to prepare for the hearing the next day. On June 9, 2000, the Commission granted the postponement. At the time, the parties agreed to reschedule the oral argument for September 12, 2000.

12. On August 18, 2000, Petitioners faxed a letter to the Commission indicated that they were talking to a firm about representing them in this matter, and that the firm would not have time to review the documents until the end of September; Petitioners thus requested another postponement. No firm purporting to represent the Petitioners in this matter ever contacted the Commission.

13. On August 22, 2000, the Commission sent a letter to Petitioners indicating that if oral argument could not be scheduled for September 12, 2000, that the Petitioners would need to contact the Commission to reschedule oral argument when they were prepared for oral argument. Petitioners never contacted the Commission to reschedule oral argument.

14. On March 22, 2001, the Commission sent a letter to all parties indicating that it would consider dismissing the case for lack of prosecution and asked the parties to agree to reschedule oral argument for either June 12, 2001 or July 10, 2001. The Commission asked the parties to indicate their preference within 30 days. The Executive Director and Friends of the Columbia Gorge responded, but Petitioners failed to respond.

15. On April 4, 2001, Petitioners sold the property that is the subject of this appeal, described as Adjusted Lot 1 of Short Plat SP-98-62, in a warranty deed to another party. Petitioners did not inform the Commission of this transfer. The Commission learned about this on or about May 1, 2001. Exhibit A, attached to this Order is a copy of a warranty deed showing transfer of the property from Petitioners to Daniel Stingl.

16. On April 23, 2001, the Commission informed the parties that oral argument would be scheduled for June 12, 2001. Although no response was requested, Petitioners did not respond in any way to this notice, even to inform the Commission that they had sold the property.

17. On May 1, 2001, the Commission sent a letter to the Petitioners stating that it had come to the Commission's attention that the Petitioners no

longer owned the property that is the subject of this appeal. The Commission stated that it could not take action on the appeal without authorization from the current property owner. The Commission informed Petitioners that it would dismiss the appeal unless, by May 29, 2001, the Petitioners submitted a written and signed authorization from the current property owner for the Petitioners to continue the appeal, or the current property owner filed a substitution of party to continue the appeal as Petitioner. The Commission sent this letter certified, return receipt requested to the Petitioners and the current property owner. Both parties signed for the letter, but did not respond to the Commission's request for written authorization or a substitution of party.

18. The Commission does not have a written authorization from the current property owner allowing Petitioners to continue the appeal and does not have any written notice that the current property owner wishes to continue the appeal.

Analysis

It is appropriate to dismiss this matter as moot. In this case, Petitioners obtained their standing to appeal the decision by virtue of being the applicants on the underlying decision, and had authority to be the applicants by virtue of being the property owners. Because Petitioners no longer have any legal interest in the property, nor authorization from the current property owner to continue making development decisions for the property, the Petitioners no longer have standing to maintain this appeal. Further, the Commission does not have any indication from the current property owner that he wishes to adjudicate this

matter as Petitioner. Without any party maintaining the appeal, the appeal is moot.

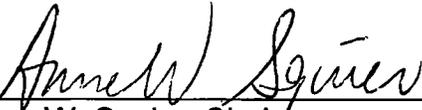
Dismissal of this matter would not affect the current property owner's ability to file a new land use application for a substantially similar use. The current property owner, or his authorized representative, may submit a new land use application at any time for review and consideration by the Executive Director and would have all the rights of any applicant, not affected by this dismissal.

Because: (1) Petitioners have no legal interest in the property that is the subject of this appeal; (2) Petitioners do not have authority to act as agent for the current property owner; and, (3) the current property owner has not indicated that he wishes to continue this appeal as Petitioner, this appeal is moot and dismissal is appropriate.

It is also appropriate to dismiss this appeal for lack of prosecution. Neither Petitioners nor the current property owner have demonstrated a continuing interest in moving this appeal toward a hearing or decision. Petitioners failed to seek to have the stay of briefing lifted. Petitioners refused to sign a prehearing order, linking their refusal to unrelated issues. Petitioners caused two postponements of oral argument and never attempted to reschedule oral argument. Petitioners sold the property, did not inform the Commission of the sale, and failed to provide the Commission with authorization from the property owners allowing them to continue the appeal. Finally, the current property owner has not expressed any interest in continuing the appeal as Petitioner.

For the reasons stated above, this appeal is **DISMISSED**.

DATED this 30th day of May, 2001



Anne W. Squier, Chair
Columbia River Gorge Commission

Attachment: April 4, 2001 Warranty Deed

NOTICE: You are entitled to judicial review of this Order within 60 days from the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663.