

ORIGINAL

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

BATTIN, et al.,

Petitioners,

No. 04-2-0006c

v.

CITY OF WINLOCK,

Respondent.

**ORDER  
DISMISSING  
PETITION FOR  
REVIEW**

THIS MATTER comes before the Board upon the motions of the City and the Intervenor, Cardinal FG Company, to dismiss the consolidated Petitions for Review. Cardinal FG Company's Motion to Dismiss, April 29, 2004; City of Winlock's Motion to Dismiss, April 29, 2004. Petitioners filed their responses to these motions on May 5 and May 12, 2004. Petitioner Response to City of Winlock Motion to Dismiss, May 5, 2004; Petitioner Response to Cardinal Motion to Dismiss, May 5, 2004; Memorandum in Support of Vince Panesko's Response to Winlock's Motion to Dismiss, May 12, 2004. A hearing was held on the motions to dismiss on May 24, 2004 in Olympia, Washington. At that time, the Board admitted Exhibits 58, 59, 60 (offered by the City) and exhibit 61 (offered by Petitioners without objection, to be submitted after the hearing).

**I. DECISION**

The City and the Intervenor argue that the City has not yet taken a final action that may be appealed to the Board and therefore the petitions for review are not ripe. The action that is the subject of this appeal is disputed. The City argues that the action at issue was the vote of the City Council on January 12, 2004 to authorize Gibbs and Olson, consulting engineers, to submit draft amendments to the City's Water System Plan to the State Department of Health. Petitioners contend that the January 12, 2004

1 vote adopted amendments to the City's Water System Plan and that therefore they are  
2 appealing amendments to the Water System Plan; the Water System Plan, they allege,  
3 is part of the Utilities Element of the City's comprehensive plan and thus subject to  
4 Board review.

5  
6 The City and Intervenor argue that the City merely sent its draft amendments to the  
7 City's water system plan to the State Department of Health for comment before  
8 adoption. They acknowledge that there was a failure to stamp the proposed  
9 amendments "draft" but point to the process for review of proposed water system plan  
10 amendments, as well as to the contingent nature of those amendments as evidence that  
11 actual amendments have not yet been adopted.  
12

13  
14 Petitioners have submitted many documents showing why they reasonably believed  
15 that the City had actually adopted amendments to the water system plan. *See Exhibits*  
16 *32, 34, 35, 24, and 61.* At the hearing, counsel for the City acknowledged that the  
17 Petitioners acted reasonably in filing the appeal and apologized for the poor  
18 communication on the part of the City that led the Petitioners to file their appeal.  
19

20  
21 The City has further offered Exhibit 60, which is a proposed comprehensive plan  
22 amendment that is scheduled for workshop on June 2, 2004, and a public hearing  
23 tentatively set for July 7, 2004. This proposed comprehensive plan amendment, if  
24 adopted, will authorize extension of the City's water lines beyond the City's UGA  
25 boundaries "when consistent with the GMA". The issues raised in the petitions for  
26 review may pertain to this proposed comprehensive plan amendment, the City states,  
27 but not to the January 12, 2004 action of referring the proposed amendments for  
28 comment by the State Department of Health.  
29

30  
31 We agree that the City has not yet taken a final action with respect to amendments to  
32 its water system plan. We also agree that the Petitioners acted prudently in filing their  
petitions for review to preserve their issues with respect to the extension of the City's

1 water service. The City's refusal to answer reasonable questions posed by the  
2 Petitioners about the process that would be followed does not comport with its  
3 obligations under the Growth Management Act to "[E]ncourage the involvement of  
4 citizens in the planning process and ensure coordination between communities and  
5 jurisdictions to resolve conflicts." RCW 36.70A.020(11). Had the City  
6 communicated appropriately with the citizens, Petitioners would not have had to file  
7 their petitions for review.  
8

9 Unfortunately, the Board does not have the authority to levy any penalties against the  
10 City to compensate the Petitioners for their time and effort in pursuing these petitions.  
11 Fortunately, the City has itself offered to ensure that the Petitioners each receive  
12 individual notice when the City does take its final action with respect to the extension  
13 of the water system. This will mean that the City must notify each Petitioner at the  
14 time of publication of the adoption of a final action with respect to the water system  
15 plan so that the Petitioners may decide whether they wish to file a petition with respect  
16 to that action.  
17

18 Cardinal FG Company has also agreed to provide individual notice to the named  
19 Petitioners of any final action undertaken by the County with respect to the  
20 Intervenor's proposal for a major industrial development pursuant to RCW  
21 36.70A.365.  
22  
23

## 24 II. ORDER

25 The consolidated Petitions for Review in this case are hereby DISMISSED without  
26 prejudice to the Petitioners' rights to raise these issues again with respect to a final  
27 action by the City;  
28

29 AND FURTHER PROVIDED that the City having agreed to provide individual notice  
30 to each of the Petitioners upon taking a final action with respect to the water system  
31 extension at issue in this case, the City shall provide notice of the adoption of such a  
32

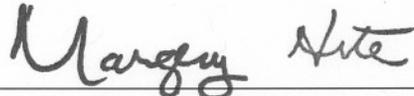
1 final action by mailing it to the addresses provided by each Petitioner in the Petitions  
2 for Review in this case no later than the date of publication by the City Council..

3  
4 Entered this 27<sup>th</sup> day of May 2004.

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

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7  
8 Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten  
9 days of issuance of this final decision.

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11 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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13  
14 Margery Hite, Board Member

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18 Nan Henriksen, Board Member

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21 Holly Gadbow, Board Member