

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

ROTH et al.,

Petitioners,

v.

LEWIS COUNTY,

Respondent,

And

CARDINAL FG COMPANY,

Intervenor.

No. 04-2-0014c

**ORDER ON  
MOTIONS TO  
DISMISS**

THIS Matter comes before the Board upon motions to dismiss by the County and the Intervenor, *Motion to Dismiss and Alternative Motion for Summary Judgment, August 11, 2004* (Intervenor motions in which the County joined); and upon motions for summary disposition by the Petitioners, *OBCT Dispositive Motion, August 11, 2004* (OBCT motion in which all Petitioners join). A hearing on the motions was held on August 30, 2004 in Olympia, Washington. OBCT was represented by attorney Gerald Steel. Eugene Butler spoke on behalf of the other Petitioners. The County was represented by deputy prosecutor Douglas Jensen. Intervenor was represented by attorneys John Hempelmann and Andrew Lane.

**SUMMARY OF DECISION**

We find that the Board has jurisdiction to determine the issues in this case, except the allegation that the challenged amendment to the County's development regulations violates the constitutional guarantees of procedural due process (Issue 2 of the Prehearing Order). On this point, we reiterate our prior holdings that this Board does not have jurisdiction to determine constitutional challenges. On the question of whether the Board lacks jurisdiction over challenges to a "procedural" ordinance, we find that whether the challenged ordinance

is procedural or not is immaterial to the Board's jurisdiction, RCW 36.70A.280(1) and 36.70A.290.

As to Petitioners' standing to raise Issues 6 and 8 of the Prehearing Order<sup>1</sup>, we find that the issues are reasonably related to the matters raised by the Petitioners to the County below and therefore the Petitioners have standing to pursue them here. RCW 36.70A.280(4).

The central question raised in both sets of motions is the compliance with the GMA of the amendments to LCC 17.20.050 that create a two-track process for processing an application for a major industrial development. That is: evaluation and adoption of the comprehensive plan amendment and development regulations through the Planning Commission/legislative process simultaneously with review of the master plan through the hearing examiner process. We agree with Petitioners that this consolidated process may create pitfalls for the County. We do not agree with the assertion that filing of a project permit and master plan application before the comprehensive plan amendment and development regulations have been adopted converts the master plan into a development regulation. We do not find that the master plan for the major industrial development is itself a development regulation and subject to the jurisdiction of the Board. Therefore, we find the consolidated process for considering the comprehensive plan amendment and development regulations at the same time as the hearings examiner reviews the master plan to comply with RCW 36.70A.365.

We do not grant the Petitioners' motion with respect to the public participation challenge but we do not dismiss that issue since there was no motion or argument requesting dismissal.

### **MOTIONS REGARDING THE RECORD**

As part of its response to the motion of OBCT, Intervenor offered the affidavit of Mr. Steve Nelson. Mr. Nelson's affidavit was offered to show that jobs that would be created with the establishment of the Cardinal Glass plant and to buttress the Intervenor's claim that the

---

<sup>1</sup> The Prehearing Order was amended on August 13, 2004 to reflect issues raised in the Amended Petition for Review. These motions were filed on August 11, 2004, before the Prehearing Order was amended.

motivation of OBCT in this case is based on a labor dispute. Neither point is at issue here and the Board granted OBCT's motion to strike Mr. Nelson's affidavit.

Intervenor also requested leave to file a motion to supplement the record at the hearing. Cardinal FG Company's Request to File Motion; and Motion to Supplement, August 30, 2004. The exhibit that Intervenor seeks to offer is a letter dated August 23, 2004, from the Department of Community, Trade and Economic Development to Lewis County Commissioner, Eric Johnson. According to the letter, it was written for the purpose of providing comments on the proposed comprehensive plan amendment and the county's adherence to the requirements of RCW 36.70A.365. The Board reserved ruling on the admissibility of this exhibit (designated Exhibit 9 by Intervenor) until the Board had an opportunity to review the letter. The letter does not address any of the issues in the present case and did not form a basis for the County's decision below. It is thus neither part of the record developed by the County nor would it be necessary or of substantial assistance to the board in reaching its decision, which are the criteria for evidence which the Board is directed to consider pursuant to RCW 36.70A.290(4). Therefore, the Intervenor's motion to supplement is denied.

### **ISSUES PRESENTED**

A. Jurisdictional challenges:

- Does the Board lack subject matter jurisdiction over this appeal
- Does this Board have jurisdiction over the constitutional due process claims;

B. Standing challenge:

- Do Petitioners have standing to raise and argue Issues No. 6 and 8 of the Prehearing Order;

C. Challenges to the consolidated procedure for processing major industrial development applications and permits:

- Does the GMA prohibit consolidated and coordinated public hearings;
- Does LCC 17.20.050 fail to comply with the GMA because it wrongly directs initial appeals of the master plan-rezone to the superior court;

- Does LCC 17.20.050 fail to comply with the GMA because it is not clear and internally consistent;
- D. Public participation challenge:
- Does LCC 17.20.050 fail to comply with the public participation requirements of the GMA; and
- E. Challenge to petition as frivolous:
- Is the petition for review frivolous because the County could consolidate the hearings without the challenged amendments;
- F. Request for invalidity:
- Should LCC 17.20.050 be found to substantially interfere with goals 5, 6, 7 and 11 of the GMA.

### **BURDEN OF PROOF**

In determining the issues presented in these motions, the Petitioners carry the burden of proof. Comprehensive plan amendments and development regulations, and amendments to them are presumed valid upon adoption. RCW 36.70A.320(1). To meet their burden, the Petitioners must show that the challenged amendments are clearly erroneous:

The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(3).

In order to find the County's action clearly erroneous, the board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). We review the challenges under the clearly erroneous standard.

## DECISION

### A. Jurisdictional challenges:

#### 1. Does the Board Lack Subject Matter Jurisdiction Over this Appeal

The County and Intervenor initially argue that this Board lacks jurisdiction over the subject-matter of this appeal because the ordinance being challenged is procedural in nature. Motion to Dismiss and Alternative Motion for Summary Judgment at 5-6. In support of this argument, they cite to WAC 365-195-820, governing CTED review of submissions to it under RCW 36.70A.106:

The department construes the sixty-day notice requirement as inapplicable to interim regulations for natural resource lands and critical areas, and to regulations or amendments which are merely procedural or ministerial.

WAC 365-195-820(2)

The County and Intervenor argue that this interpretation on the part of CTED is applicable to the boards' jurisdiction under RCW 36.70A.280:

A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it related to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW

RCW 36.70A.280(1)(a)

However, the Intervenor and County fail to explain how CTED's interpretation of its duty to provide comments on legislative enactments of counties and cities has any bearing on the jurisdiction of the boards to hear appeals. The boards have jurisdiction to hear appeals of comprehensive plans, development regulations, and amendments to them RCW 36.70A.280 and 36.70A.290. Nothing in the statute distinguishes between procedural and other types of issues presented to the boards. In fact, public participation challenges are one of the most frequent kinds of questions which the boards consider and those would fairly be deemed procedural.

**Conclusion:** This Board has jurisdiction over challenges to comprehensive plans, development regulations, and amendments to them whether procedural or substantive in nature.

**2. Does this Board have jurisdiction over the constitutional due process claims.**

Issue 2 in the Amended Prehearing Order asks “Whether the amendment enacted without consultation with the cities violates constitutional guarantees of due process and therefore does not comply with RCW 36.70A.365 and .367?” This Board has only that authority that the legislature has expressly conferred upon it. See *Skagit Surveyors and Engineers v. Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962, 1998 Wash. LEXIS 473 (1998). The statute limits the authority of the boards to determining the compliance with the GMA, SEPA or the Shoreline Management Act of comprehensive plans, development regulations and amendments to them. RCW 36.70A.280 and 36.70A.290. The GMA does not confer upon the boards the authority to determine constitutional claims. See, e.g., *Mahr v. Thurston County*, WWGMHB Case No. 94-2-0007 (Motions Order, September 7, 1994).

**Conclusion:** This Board lacks jurisdiction to consider the constitutional due process challenges in Issue 2 of the Prehearing Order.

**B. Standing challenge:**

**Do Petitioners Have Standing To Raise and Argue Issues No. 6 and No. 8 of the Prehearing Order<sup>2</sup>**

Issue 6 of the Prehearing Order asks:

Whether the amendment to LCC 17.20.050(5) providing that appeals of the County action on the hearing examiner recommendations are pursuant to Ch. 36.70C RCW fails to comply with RCW 36.70A.280 and .290(2) which gives jurisdiction over Comprehensive Plans and implementing development regulations, including amendments, to this Board?

Issue 8 of the Prehearing Order raises the question:

---

<sup>2</sup> The issues are phrased slightly differently and are numbered Issues 7 and 9 in the Amended Prehearing Order, entered after these motions were filed.

Whether the provisions of LCC 17.20.050 that provide for review under Chapter 36.70C RCW for Master Plan Site Plan Approvals should be found not in compliance with RCW 36.70A.280 and .290 and invalid for substantial interference with RCW 36.70A.020(5), (6), (7), and (11)?

Intervenor argues that Petitioners lack standing as to these issue because they failed to raise them to the County Commissioners in the proceedings before them. Motion to Dismiss and Alternative Motion for Summary Judgment at 7-9.

Petitioners' standing in this case is based on oral comments made at a May 3, 2004 public hearing (Exhibit 10) and two comment letters (Exhibits 7 and 8). In those comments, Petitioners raised concerns regarding the consolidated process adopted through the amendments to LCC 17.20.050. Both comment letters point to the two-track process and raise concerns about bifurcating the review between the hearings examiner and the Planning Commission.

In *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App.657, 997 P.2d 405, 2000 Wash. App. LEXIS 583 (Div. I, 2000), the Court of Appeals addressed the question of what constitutes participatory standing under the GMA. Participatory standing is standing based on RCW 36.70A.280(2)(b): "a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested." The court found that the use of the term "matter" in this provision of the Act was neither so narrow as to require that the specific legal issue in the petition for review must have been raised to the County below nor so broad as to encompass any comment on the legislation itself. Instead, the court held: "We conclude that it [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. at 673. This, the court found, is shown when the participation below is "reasonably related" to the issue being presented to the growth hearings board. *Ibid.* As the Intervenor notes in its Motion to Dismiss and Alternative Motion for Summary Judgment at 8, this holding was codified in 2003 at RCW 36.70A.280(4).

We find that the challenges to the apportionment of jurisdiction between the growth hearings board and the hearing examiner to be reasonably related to the matters raised below. Comprehensive plan amendments and development regulations under the Lewis County Code are processed through the Planning Commission process before going to the county commissions. Appeals of those decisions are heard as GMA petitions to this board. Therefore, the challenge to bifurcating the issues in a major industrial development proceeding is reasonably related to challenges to apportioning appellate jurisdiction between the growth board and the superior court.

**Conclusion:** Issues No. 6 and 8 of the Prehearing Order are reasonably related to the matters the Petitioners raised below and therefore Petitioners have standing to raise them to this board.

**C. Challenges to the consolidated procedure for processing major industrial development applications and permits:**

- 1. Does the GMA prohibit consolidated and coordinated public hearings;**
- 2. Does LCC 17.20.050 fail to comply with the GMA because it wrongly directs initial appeals of the master plan-rezone to the superior court;**
- 3. Does LCC 17.20.050 fail to comply with the GMA because it is not clear and internally consistent**

All three of these issues have to do with the County's establishment of a two-track process for addressing a major industrial development. The County has elected to establish a process for reviewing and approving proposals to authorize siting of specific major industrial development outside urban growth areas pursuant to RCW 36.70A.365. The challenged ordinance (Ordinance 1179G) amends LCC 17.20.050 to read as follows<sup>3</sup>:

- (1) Once environmental review is complete, the application shall be noted for one consolidated public hearing before the hearings examiner as an application for a master plan-rezone, and before the Planning Commission as an application for amendments to the comprehensive plan and development regulations. As anticipated in RCW 36.70A.365(3) and .367(4), amendments to the comprehensive plan and development regulations under LCC 17.20.050 shall be separate from the annual comprehensive plan amendment process specified in LCC 17.12.

---

<sup>3</sup> For ease of reference, additions are underlined but deletions are not shown.

- (2) Once the application is complete and environmental documents are completed, the County shall provide notice of the consolidated public hearing by publishing notice of the hearing not less than 10 days prior to the hearing and mailing notice to all property owners of record within 1,000 feet of the site. The County staff report and supporting materials shall be available to the public at the time of publication and mailing of the notice.
- (3) In the consolidated public hearing, the hearings examiner shall hold an open record hearing with respect to the master plan. In the consolidated public hearing, the Planning Commission shall hold a hearing with respect to amendments to the comprehensive plan and development regulations. Following the consolidated public hearing, the hearings examiner and Planning Commission shall deliberate and make their recommendations to the Board of County Commissioners with respect to the master plan and amendments to the comprehensive plan and development regulations.
- (4) The final decisions on the master plan and on the amendments to the comprehensive plan and development regulations shall be made by the Board of County Commissioners after the consolidated public hearing. The Board may accept, modify, or reject the recommendations of the hearings examiner and Planning Commission. Once adopted, the comprehensive plan and development regulations shall identify the zoning map and development regulations for the master plan area. A master plan may be amended through the same process as the original adoption. Any adopted development regulation shall become a map and separate chapter of the County zoning ordinance.
- (5) Amendment to the comprehensive plan and development regulations to support a master plan is a legislative process, with appeal pursuant to Chapter 36.70A RCW. Adoption of the site plan approval evidenced in the master plan is adjudicative under Chapter 36.70B RCW, with appeal pursuant to Chapter 36.70C RCW.

Petitioner OBCT argues that this process does not comply with the GMA because it directs appeal of the master plan-rezone through the LUPA (Land Use Petition Act) process to superior court rather than through the GMA to the growth boards. *OBCT Dispositive Motion at 5.* OBCT argues that because the master plan-rezone application requires a comprehensive plan amendment before it can be approved, it is not a project permit as defined by RCW 36.70B.020(4) but a development regulation. OBCT urges that the master plan-rezone cannot be considered a site specific rezone, defined as a project action by RCW 36.70B.020(4), because it is not consistent with the existing comprehensive plan map when the application is filed.. Therefore, OBCT argues that the master plan-rezone must be adopted legislatively as a GMA development regulation under RCW 36.70A.030(7), rather

than through a hearings examiner quasi-judicial process for project permits. *OBCT Dispositive Motion at 10*. A project permit is subject to the jurisdiction of the superior courts as a LUPA appeal, OBCT points out, but a challenge to adoption of a development regulation is subject to the jurisdiction of the growth board. *Ibid*. Therefore, OBCT argues, the ordinance incorrectly directs parties to appeal the master plan-rezone decision to the superior court.

For these reasons, OBCT also urges that the amendments are not internally consistent on a number of bases as required by RCW 36.70A.070 and 36.70A.130(1)(b). *OBCT Dispositive Motion at 7*.

The Intervenor and County argue to the contrary that there is nothing in the GMA prohibiting consolidation of public hearings. *Motion to Dismiss and Alternative Motion for Summary Judgment at 6-7*. They point out that RCW 36.70A.365 applies to specific major industrial developments so that by definition it requires a specific project to review. *Cardinal FG Company's Response to OBCT's Dispositive Motion at 5*. The County's scheme allows both aspects of the review to occur at the same time: the legislative action rezones the property and the quasi-judicial review determines site-specific applications. *Ibid*. There is nothing in the GMA, they argue, to prohibit the consolidated process and it promotes the desirable aim of bringing all the related issues together.

We first consider the Petitioners' argument that the County has delegated to the hearings examiner and directed review to the superior court of a rezone decision. It is clear and agreed by all parties that the County cannot change the jurisdiction of the growth boards. Pursuant to RCW 36.70A.365, approval of a master planned location for a specific manufacturing, industrial or commercial business is an amendment to the comprehensive plan. Amendments to a county comprehensive plan are subject to the jurisdiction of the growth boards. RCW 36.70A.280(1); 36.70A.290(2); *Wenatchee Sportsmen's Association v. Chelan County*, 141 Wn.2d 169, 178, 4 P.3d 123. LCC 17.20.050 provides that the comprehensive plan amendment is reviewable by the growth boards, and further provides

that the implementing development regulations regarding the major industrial development are subject to appeal under the GMA.

However, under the County's scheme, the master site plan elements of the major industrial development are reviewed by the hearings examiner. LCC 170.20.050(3). Petitioners concede that the master site plan would properly be a subject for a hearings examiner review process *if* the project master plan being reviewed were compliant with the comprehensive plan and development regulations already in place. *OBCT Dispositive Motion* at 7-8. However, Petitioners argue that the site plan becomes a development regulation if the the proposed use is not consistent with comprehensive plan amendment and development regulations in place at the time of application. *Ibid.*

Petitioners' argument turns on the definition of a development regulation in RCW 36.70A.030(7) and the exception in that definition for "project permits" as defined by RCW 36.70B.020(4):

"Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. *A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.*

(emphasis added)

Petitioners point to the definition of a site-specific rezone as a project permit in RCW 36.70B.020. To fall within the definition of a project permit, a site-specific rezone must be authorized by a comprehensive plan or subarea plan. Since, Petitioners argue, this is a site-specific rezone not authorized by the comprehensive plan, it is not a project permit but a development regulation.

Petitioners focus on the term "rezone" used in the first sentence of LCC 17.20.050(1). A closer reading of the amended section shows that while LCC 17.20.050(1) refers to the process before the hearings examiner as "a master plan-rezone", it does so only once.

Thereafter, the section refers to the “master plan” without any use of the term “rezone”. It is also apparent from the rest of the code section that it is the master site plan, not the rezone, that will be considered by the hearings examiner. The change in zoning or “rezone” needed to provide the location for the major industrial development will be accomplished by an amendment to the comprehensive plan through the legislative process for a comprehensive plan amendment. LCC 17.20.050(4). The development regulations adopted will also be considered through the Planning Commission process and both are reviewable under the GMA. LCC 17.20.050(4) and (5). We conclude that, under the amended code section at issue here, the hearings examiner does not consider a rezone application but instead conducts a master plan review.

We must then determine whether the master plan review envisioned in the challenged amendments is a development regulation. Site-specific rezones are not the only types of land use actions that are excluded from the definition of “development regulations” in RCW 36.70A.030(7). Any land use or environmental permit or license required from a local government for a project action is a “project permit” under RCW 36.70B.020(4), and thus not a “development regulation” under RCW 36.70A.030(7). Included in the definition as types of project permits are building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical areas ordinances. RCW 36.70B.020(4). The review of the master site plan by the hearings examiner falls within this category of actions defined as project permits and is therefore not a development regulation.

Because the subject of the hearings examiner review is a project permit rather than a development regulation, it is proper for the County to direct review of that decision to the superior courts through the Land Use Petition Act (“LUPA”). See Chapter 36.70C RCW. Furthermore, the division of responsibility for review of appeals of comprehensive plan amendment and development regulation adoptions through the GMA processes and the review of the master plan review through LUPA in LCC 17.20.050 is internally consistent.

Petitioners have pointed out some potential pitfalls in the County's combined process. For example, OBCT alerted the County that "if you intend to have consolidated hearings, there should be more attention given to the procedures to be used at the hearings so that quasi-judicial due process requirements and appearance of fairness requirements are not violated." Exhibit 7. While these considerations do not make the challenged amendment noncompliant, they may make it more difficult for the County to comply with its GMA procedural requirements when it adopts a comprehensive plan amendment or development regulations on a major industrial development application pursuant to LCC 17.20.050.

**Conclusion:** The combined process for considering a comprehensive plan amendment and implementing development regulations at the same time that the hearings examiner considers the master site plan complies with RCW 36.70A.365 and does not create an internal inconsistency in the County's development regulations in violation of RCW 36.70A.070 and 36.70A.130(1).

**D. Public Participation challenge:**

**Does LCC 17.20.050 fail to comply with the public participation requirements of the GMA.**

OBCT argues first that the challenged amendments do not comply with the public participation requirements of the GMA because they do not allow continuous public participation as to the "single open record hearing" before the hearings examiner. OBCT Dispositive Motion at 10. However, since we have already found that the proceedings before the hearings examiner are in the nature of a project permit review rather than the adoption of development regulations under the GMA, the GMA public participation requirements do not apply to the proceedings before the hearings examiner. Therefore, we do not grant the Petitioners' motion on public participation grounds.

However, we note that the Petitioners raised another basis for their public participation challenge in Exhibit 8:

Major industrial applications have impacts far beyond 1000 feet and the notice provisions of the proposed ordinance are simply inadequate.

This argument was not raised in the Petitioners' dispositive motion, nor did the Intervenor and County move for summary judgment on the public participation challenge. We do not, therefore, dismiss the public participation challenge at this time.

**Conclusion:** Petitioners have not met their burden of proof with respect to their motion for summary judgment on public participation grounds.

**E. Challenge to petition as frivolous:**

**Is the petition for review frivolous because the County could consolidate the hearings without the challenged amendments.**

The Intervenor and County urge that the Board should dismiss the petition for review because the County could consolidate its hearings without the challenged amendments. This, they argue, makes the petition frivolous. Motion to Dismiss and Alternative Motion for Summary Judgment at 10.

**Conclusion:** Because we find that the consolidated hearings process established in LCC 17.20.050 complies with RCW 36.70A.365, we do not reach this issue.

**F. Request for invalidity:**

**Should LCC 17.20.050 be found to substantially interfere with goals 5, 6, 7 and 11 of the GMA.**

**Conclusion:** We have found no provision of the challenged ordinance noncompliant and therefore do not consider invalidity at this time.

**FINDINGS OF FACT**

1. Lewis County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.
2. Olympia Building and Construction Trades Council and Affiliated Unions ("OBCT") is a labor union that participated in the County's legislative adoption process for Ordinance 1179G by submitting a comment letter on May 1, 2004.

3. Petitioners Susan Roth, Richard Roth, Eugene Butler, Michael Vinatieri, Edward Smethers, Karen Knutsen, Valerie Gore, Richard Battin, Judy Battin and June Wristen-Mooney participated in the County's legislative adoption process by testifying or submitting written comments to the Board of County Commissioners on May 3, 2004.
4. Intervenor Cardinal FG Company is the applicant for a major industrial development in Lewis County and has been granted intervention status in this matter.
5. Petitioners' standing in this case is based on oral comments made at a May 3, 2004 public hearing (Exhibit 10) and two comment letters (Exhibits 7 and 8). In those comments, Petitioners raised concerns regarding the consolidated process adopted through the amendments to LCC 17.20.050.
6. Issues No. 6 and 8 of the Prehearing Order are reasonably related to the matters the Petitioners raised below.
7. Issue No. 2 of the Prehearing Order raises a challenge to the adoption of Ordinance 1179G on the basis of a violation of constitutional guarantees of due process
8. The County has elected to establish a process for reviewing and approving proposals to authorize siting of specific major industrial development outside urban growth areas pursuant to RCW 36.70A.365.
9. LCC 17.20.050 provides that the comprehensive plan amendment adopted to locate a major industrial development is reviewable by the growth boards, and further provides that the implementing development regulations regarding the major industrial development are subject to appeal under Chapter 36.70A RCW.
10. The master site plan for the major industrial development is reviewed by the hearings examiner.. LCC 17.20.050(3).
11. While LCC 17.20.050(1) refers to the process before the hearings examiner as "a master plan-rezone", it does so only once. Thereafter, the section refers to the "master plan" without any use of the term "rezone".
12. Under the challenged ordinance, the hearings examiner does not consider a rezone application but instead conducts the master plan review.

13. LCC 17.20.050 provides that any appeal of the master plan decision by the hearings examiner and approved by the county commissioners will be made to the superior court under Chapter 36.70C RCW, the Land Use Petition Act (“LUPA”).
14. The division of responsibility for review of appeals of comprehensive plan amendment and development regulation adoptions through the GMA processes and the review of the master plan review through LUPA in LCC 17.20.050 is internally consistent.

### **CONCLUSIONS OF LAW**

- A.** This Board has jurisdiction over the parties to this action.
- B.** This Board lacks subject-matter jurisdiction over the due process challenge in Issue No. 2 of the Prehearing Order.
- C.** This Board has subject-matter jurisdiction over the remaining issues challenged in this motion.
- D.** Petitioners have standing to raise the challenges in Issues Nos. 6 and 8 of the Prehearing Order.
- E.** The requirement (LCC 17.20.050 as amended by Lewis County Ordinance 1179G) that the comprehensive plan amendment and development regulations adopted for a major industrial development be processed as a legislative action, reviewable under Chapter 36.70A RCW, complies with RCW 36.70A.365.
- F.** The direction that review of the hearings examiner decision regarding the master plan shall be to the superior courts through the Land Use Petition Act (“LUPA”)(Chapter RCW 36.70C RCW) in LCC 17.20.050 does not violate RCW 36.70A.365.
- G.** The combined process for considering a comprehensive plan amendment and implementing development regulations at the same time that the hearings examiner considers the master site plan complies with RCW 36.70A.365
- H.** Petitioners have not met their burden of proof with respect to their motion for summary judgment on public participation grounds.

**ORDER**

Based on the above discussion and findings of fact, the Board hereby orders that **Issues Nos. 2, 4, 5, 7, 8, 9 of the Amended Prehearing Order dated August 13, 2004 are hereby DISMISSED.** The remaining issues shall be considered at the hearing on the merits scheduled for October 29, 2004.

This is not a final decision for purposes of appeal pursuant to RCW 36.70A.300(5) nor for purposes of reconsideration pursuant to WAC 242-02-832. This order shall become final upon the date of entry of the Board's final decision and order on the remaining issues in this case.

Entered this \_\_\_\_\_ day of September, 2004.

\_\_\_\_\_  
Margery Hite, Presiding Office

\_\_\_\_\_  
Holly Gadbow, Board Member

\_\_\_\_\_  
Gayle Rothrock, Board Member